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**TRANSCRIPT OF RECORD**

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**Supreme Court of the United States**

**OCTOBER TERM, 1954**

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**No. 250**

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**ANTHONY TONY SICURELLA, PETITIONER,**

**vs.**

**UNITED STATES OF AMERICA**

---

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT**

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**PETITION FOR CERTIORARI FILED JULY 30, 1954**

**CERTIORARI GRANTED OCTOBER 14, 1954**

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**STATEMENT UNDER RULE 10(b) OF THE  
RULES OF THE UNITED STATES COURT  
OF APPEALS FOR THE SEVENTH CIRCUIT**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS

Eastern Division  
(Caption—53 CR 288)

\* \* \*

Now comes ANTHONY TONY SICURELLA, the defendant-appellant in the above entitled cause, by KARL M. MILGROM, his attorney, and pursuant to Rule 10 (b) of the United States Court of Appeals for the Seventh Circuit, states as follows:

1. This proceeding was commenced by the filing of an indictment by the Grand Jury on April 17, 1953;
2. The indictment named ANTHONY TONY SICURELLA as a defendant. The other party to the suit and named in the indictment caption was the UNITED STATES OF AMERICA;
3. The defendant entered his plea of not guilty on June 2, 1953;
4. Following the indictment and pending trial, the defendant was allowed to remain at liberty by the trial court, the defendant being then admitted to bail taken in the amount of ONE THOUSAND DOLLARS (\$1,000.00);
5. The trial was had on September 23, 1953, without a jury before the Honorable MICHAEL L. IGOE, Judge of the United States District Court;
6. Said Judge MICHAEL L. IGOE on September 23, 1953, found the defendant, ANTHONY TONY SICURELLA, guilty as charged in the indictment and sentenced the defendant to two (2) years imprisonment, the execution of such sentence being then stayed for ten (10) days, and the defendant being allowed to remain at large during that time on the ONE THOUSAND DOLLAR (\$1,000.00) bond previously executed by him;
7. On October 1, 1953, the defendant, ANTHONY TONY SICURELLA, filed a notice of appeal; and

8. On October 2, 1953, the trial court admitted the defendant to bail then taken in the amount of ONE THOUSAND DOLLARS (\$1,000.00) pending appeal to the United States Court of Appeals for the Seventh Circuit.

Karl M. Milgrom  
Attorney for Defendant-Appellant

---

\* \* \*

### **DOCKET ENTRIES**

(To and including October 26, 1953)

(Caption—53 CR 288)

\* \* \*

Date                          Proceedings

Vio: Universal Military Training and Service  
Act. Sec. 462, T. 50 Appendix U. S. C.

\* \* \*

4-17-53	Filed Indictment (1) (JS-2)	15.00	US
4-17-53	Order to issue bench warrant and fix bond at \$1,000.00 - BARNES, J.		
4-17-53	Issued bench warrant with copy of indictment. mk.		
4-21-53	Filed appearance bond \$1,000.00		s
4-28-53	Filed wattant retd exetd	\$2.00	
6-2-53	Defendant without counsel enters a plea of not guilty. Cause set for trial on June 22, 1953 - Igoe, J		
6-4-53	Mld ntes US & deft		s
6-22-53	Cause held on trial call subject to trial on June 29, 1953 - Igoe, J		
6-23-53	Mld ntes US & deft		s
6-24-53	Filed appearance of Karl M. Milgrom		s
6-29-53	On defendants motion cause reset for trial on		

- Sept. 14, 1953 - Igoe, J  
" " " Mld nte  
9-14-53 By agreement cause reset for trial on Sept. 23,  
1953 - Igoe, J.  
9-14-53 Mld nte  
9-23-53 File subpoena d. t. (Otto Kerner, Jr. & Kline  
Weatherford) retd served <sup>s</sup>  
9-23-53 Motion of the Government that subpoena duces  
tecum served upon Mr. Otto Kerner, Jr., United  
States Attorney, and Mr. Kline Weather-  
ford, Agent in charge of the Federal Bureau  
of Investigation for this district be quashed  
is argued and allowed. Defendant given leave  
to file affidavit in opposition to said motion -  
said subpoena duces tecum are hereby  
quashed - Igoe, J.  
9-23-53 Filed Affidavit (3)  
9-23-53 Filed motion for judgment of acquittal (4)  
9-23-53 Filed Jury Waiver  
9-23-53 Cause called for trial. Jury waived and Jury  
Waiver signed and approved. Evidence heard  
for Government-Government rests-evidence  
heard for defendant-defendant rests-at the  
close of all the evidence defendant moves for  
judgment of acquittal-said motion is argued  
and overruled-Court enters a finding of guilty  
-defendant committed to the custody of the  
Attorney General for a period of Two (2)  
Years. Stay of execution granted on defendant's  
motion for 10 days (draft) JS3 Bond on  
Appeal fixed in the sum of \$1,000 - Igoe, J.  
9-24-53 Mld ntes  
9-24-53 Issued commitment & copies to U. S. Marshal s  
10-1-53 Filed Notice of Appeal of Defendant (1) 5.00 pd  
" Mailed Copy of Notice of Appeal to U. S. Atty.  
and copy with statement of docket entries to  
U. S. C. A.-7th Circuit B

\* \* \*

- 10-2-53 Order admitting Defendant, Anthony Tony Sieurella, to bail in the sum of \$1,000 pending appeal of judgment entered herein on Sept. 23, 1953 to U. S. C. A. for the Seventh Circuit; and also giving him leave to substitute photostatic copies for all original exhibits received in evidence herein; requiring the Official Court Reporter to mark such photostatic copies as the original exhibits are marked; requiring Clerk of this Court to certify and incorporate such photostatic copies of all said original exhibits in the record on appeal, and to forward such copies to the Clerk of said Court of Appeals, on said appeal -DRAFT- Igoe, J. (1) Mailed Notice to Attys. and U. S. Marshal  
10-2-53 B
- 10-2-53 Filed Bond on Appeal (2)B
- 10-7-53 Enter order extending time for filing by Anthony Tony Sieurella, defendant-appellant, of his designation of contents of record on appeal, on the appeal taken from the judgment entered herein on September 23, 1953 to the United States Court of Appeals for the Seventh Circuit, to and including October 26, 1953 - Igoe, J. DRAFT
- 10-7-53 Mld ntes to U. S. & Atty Milgrom s
- 10-26-53 Filed Defendant-appellant's statement of points (2)
- " Filed Defendant-Appellant's Designation of contents of record on appeal (2)B

## **INDICTMENT**

(Filed April 17, 1953)

(Caption—53 CR 288)

\* \* \*

The April 1953 Grand Jury charges:

That on or about the fifth day of March, 1953, at Chicago, Illinois, in the Northern District of Illinois, Eastern Division,

**ANTHONY TONY SICURELLA,**

defendant, being a male person who is required to and did register under the provisions of the Universal Military Training and Service Act, and who duly became a registrant with Local Selective Service Board Number 14, 226 West Jackson Boulevard, Chicago, Illinois, and was duly classified in Class I-A, and was ordered to report for induction by said Local Board, and who did report for induction as ordered, and was examined and qualified for induction, and who was thereupon charged with the duty of submitting to induction, in accordance with the provisions of the Universal Military Training and Service Act, and the rules and regulations thereunder, more particularly Regulation 1632-14(b)(5), then and there unlawfully, wilfully, knowingly and feloniously did neglect and fail and refuse to perform the duty of submitting to induction; all in violation of the Universal Military Training and Service Act, Section 462, Title 50, Appendix, United States Code.

**A TRUE BILL:**

**Dale E. Koerner**

**Foreman**

**Otto Kerner Jr**

**United States Attorney**

\* \* \*

**SUBPOENA DUCES TECUM**

(Filed September 23, 1953)

Case No. 53 CR 288

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS****The President of the United States of America****To OTTO KERNER, JUNIOR, United States District Attorney; and KLINE WEATHERFORD, Agent in Charge of the Chicago Office of the Federal Bureau of Investigation;****—GREETING:**

WE COMMAND you, that all business and excuses being laid aside, you and each of you attend before the Honorable MICHAEL [L.] IGOE, one of the Judges of the United States District Court for said District, on the twenty third (23rd) day of September, A. D. 1953, at 10:00 o'clock in the forenoon and from day to day thereafter until the below mentioned cause is determined in Room 627 United States Court House in Chicago, in said District, to testify and *given* evidence in a certain cause now pending and undetermined in said Court, wherein UNITED STATES OF AMERICA is Plaintiff and ANTHONY TONY SICURELLA, Defendant, on the part of said ANTHONY TONY SICURELLA And that you also diligently and carefully search for, examine, and inquire after and bring with you, and produce at the time and place aforesaid, a certain Federal Bureau of Investigation investigative report submitted to Roy West, as Hearing Officer of the United States Department of Justice, in connection with the hearing conducted by said Hearing Officer relating to the conscientious objector Selective Service status of said ANTHONY TONY SICURELLA, And this you shall in nowise omit, under the penalty of the law in that case made and provided.

To the Marshal of the Northern District of Illinois to execute and return in due form of law.

Roy H. Johnson

Clerk

By William E. Keeley Jr.

Deputy Clerk

SEAL

CCPY

Dated: 9-16-53

\* \* \*

\* \* \*

**AFFIDAVIT IN OPPOSITION TO MOTION  
TO QUASH SUBPOENA**

(Filed September 23, 1953)

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
Eastern Division

(Caption—53 CR 288)

\* \* \*

STATE OF ILLINOIS }  
COUNTY OF COOK } ss.  
                          }

KARL M. MILGROM, being duly sworn upon his oath, deposes and says:

I am a member of the bar of this Court. My offices are at 19 South La Salle Street, Chicago 3, Illinois. I am the attorney of record for the defendant herein;

The defendant is charged by indictment with the offense of a violation of Title 50, Appendix, Section 462, United States Code, in refusing to submit to induction. The defendant has pleaded not guilty. Upon trial the defendant will contend that a judgment of acquittal ought to be en-

tered because the draft board order commanding him to appear for induction is void because the draft boards violated the rights of defendant and illegally denied his claim for deferment as conscientious objector, opposed to both combatant and noncombatant service. The defendant expects to show that the actions of the local board and appeal board are illegal, arbitrary and capricious. He will attempt to show that the determination of the Special Assistant to the Attorney General in finding that the defendant was not a conscientious objector, opposed to both combatant and noncombatant military service, is without basis in fact, contrary to law, arbitrary and capricious;

Pursuant to the requirement of Section 6(j) of the Universal Military Training and Service Act, the Department of Justice made an inquiry as to the defendant before hearing was held by the hearing officer. This inquiry was conducted by one or more Federal Bureau of Investigation agents, the name or names of whom are unknown to the defendant. The results of the inquiry were reduced to writing and made into a report to the hearing officer who affiant is informed and believes, recommended a 1-O classification for defendant, which classification was that of a conscientious objector opposed to both combatant and noncombatant military service. The defendant, requested the hearing officer to be allowed to see said report, and also requested the hearing officer to be advised as to such report's contents, and that both of said requests were refused. The report will show, affiant is informed and believes, and so states the fact to be, that the defendant is such a conscientious objector and entitled to such 1-O classification. It is necessary that the defendant examine and see such report and have the opportunity of offering it in evidence at his trial, in order to properly defend at the trial of the indictment in this case:

The report, upon information and belief, is in the hands of either the United States District Attorney or the Agent in Charge of the Chicago Office of the Federal Bureau of Investigation. Each of these persons has been duly served

with subpoena duces tecum to produce such report upon the trial of this action;

The defendant is not engaged in a fishing expedition. The production of the Federal Bureau of Investigation report and the giving of testimony required by the subpoena are material and necessary for the defense to the indictment upon the trial of this case. They will show affiant is informed and believes and so states the fact to be, that defendant is as a matter of law, a conscientious objector and not liable for unlimited service. Even though the report sought by the subpoena may be claimed to be confidential by the Government, it must be produced because such document is a part of the administrative determination and action supporting the indictment which is questioned by the defendant;

Since the validity of the administrative determination cannot be established unless and until there is such examination of, and opportunity to offer, the entire administrative record and testimony relied upon by the Department of Justice, which Department recommended the denial of the claim for classification as conscientious objector opposed to all military service, it is necessary for the Court to deny the motion to quash the subpoena; and

If the motion to quash the subpoena is granted, the defendant will be deprived of right to due process of law, contrary to the Fifth Amendment to the United States Constitution and rights guaranteed by the Selective Service Regulations and Rule 17(a) (c) of the Federal Rules of Criminal Procedure.

Karl M. Milgrom

Subscribed and sworn to before me  
this 23rd day of September, 1953.

Emma E. Jacob  
Notary Public.

**ORDER TO QUASH SUBPOENA DUCES TECUM**

(Filed September 23, 1953)

Igoe, J.

September 23, 1953

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
Eastern Division

(Caption—53 CR 288)

\* \* \*

This day comes the United States by the United States Attorney comes also the defendant Anthony Tony Sicurella by his counsel and the Government by the United States Attorney enters herein its motion that subpoenas duces tecum served herein upon Mr. Otto Kerner, Jr., United States Attorney and Mr. Kline Weatherford, Agent in Charge of Federal Bureau of Investigation, for this District and the Court having heard the arguments of counsel and being fully advised in the premises it is

ORDERED that said motion be and the same is hereby allowed and it is

FURTHER ORDERED that leave be and is hereby given to the defendant to file affidavit in opposition to said motion and that said subpoenas duces tecum be and they are hereby quashed

—  
\* \* \*

**MOTION FOR JUDGMENT OF ACQUITTAL**

(Filed September 23, 1953)

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
Eastern Division

(Caption—53 CR 288)

\* \* \*

Now comes the defendant, ANTHONY TONY SICURELLA and moves the Court for a judgment of acquittal for each and every one of the following reasons:

1. There is no evidence to show that the defendant is guilty as charged in the indictment.
2. The Government has wholly failed to prove a violation of the Act and Regulations by the defendant as charged in the indictment.
3. The undisputed evidence shows that the defendant is not guilty as charged.
4. The denial of the claim for exemption as a minister of religion by all of the draft boards, and each of them, is without basis in fact, arbitrary, capricious and contrary to law.
5. The denial of the ministerial classification is illegal, arbitrary and capricious because the draft boards employed artificial standards in determining what constitutes a minister of religion within the meaning of the Act and Regulations; and they did not follow the definition of the term used in the Act and Regulations in determining the claim of the defendant as a minister of religion.
6. The denial of the ministerial classification by the draft boards was arbitrary and capricious because they illegally held that Jehovah's Witnesses and the Watchtower Bible and Tract Society, Inc., do not constitute a recognized religious organization under the Act and Regulations.
7. The denial of the ministerial classification by the draft boards was arbitrary and capricious in that they held

that the performance of secular work by the defendant, alone, without determining whether it was his avocation and used his performance of secular work to defeat illegally his ministerial status because the undisputed evidence showed that he is not engaged in secular work as a main business but only incidentally to his main work of the ministry, and that, according to the Act and Regulations he is regularly and customarily engaged in teaching and preaching the doctrines and principles of a recognized church and pursues such preaching work as his vocation and does not preach incidentally to the performance of any secular work; and therefore the draft board order is illegal, contrary to law and without basis in fact.

8. The denial of the conscientious objector status by the local board and the board of appeal and the recommendation by the Special Assistant to the Attorney General to the board of appeal were without basis in fact, arbitrary, capricious and contrary to law.

9. The recommendation of the Special Assistant to the Attorney General to the board of appeal is arbitrary, capricious and illegal because it refers to artificial, fictitious and unlawful standards not authorized by the Act and Regulations and advises the appeal board to classify according to irrelevant and immaterial lines in determining that the defendant was not a conscientious objector when a pursuit of the Act and Regulations was the only thing for the Special Assistant to the Attorney General and appeal board to follow.

10. The undisputed evidence at the trial and the draft board records received into evidence show that there was a violation of procedural rights of the defendant before the local board on personal appearance because, at the time he appeared before the board, they had their minds made up not to reconsider his case and all of his claims de novo and they merely heard and listened to him with the intention of giving him the same classification given to him before the personal appearance so that he could appeal; accordingly, there was no de novo classification by the local board upon

personal appearance as though he had never before been classified which violated the Regulations.

11. The undisputed evidence shows that the local board failed to give the defendant a full and fair hearing upon the occasion of his personal appearance and it denied him the right to go through his file and point out the parts of the file that the board had overlooked, denied him the right to give new and additional evidence on his ministerial status and his conscientious objector claim and refused him the right to argue and to discuss his classification as required by Section 1624.2 of the Regulations.

12. The undisputed evidence shows that upon the trial the draft board members were prejudiced and discriminated against the defendant because of his membership in Jehovah's Witnesses, a religious organization, contrary to Section 1622.1(d) of the Regulations.

13. The use of the secret investigative report of the Federal Bureau of Investigation without notifying or confronting the defendant with the substance of, or the parts of it, which were considered by or relied upon by the hearing officer upon the occasion of the hearing before the Department of Justice hearing officer and also the failure to include all of the evidence in the Federal Bureau of Investigation report relied upon by the hearing officer and all that appeared in the Federal Bureau of Investigation report and that was considered by the hearing officer, and also the failure to put all of such evidence in the Federal Bureau of Investigation report in the draft board file for the use of the board of appeal and the court, constitutes a deprivation of defendant's rights to procedural due process of law in violation of the Fifth Amendment to the United States Constitution and also is a clear and unequivocal violation of the Universal Military Training and Service Act and the Regulations promulgated thereunder. (Section 1622.1(b)).

14. The failure of the court to compel the production of the Federal Bureau of Investigation investigative report, and the order of the court sustaining the motion to quash the subpoena duces tecum made by the Government, constitute

a deprivation of the defendant's rights to due process of law upon criminal trials contrary to the Fifth Amendment to the United States Constitution and the right to confrontation guaranteed by the Sixth Amendment, and also violate the statutes and rules of court providing for the issuance of subpoenas in behalf of defendants in criminal cases.

15. The undisputed evidence at the trial shows that although the local board on the defendant's personal appearance believed him to be exempt as a minister of religion, that board denied him such ministerial classification because of the views the local board believed held by other Selective Service officials, such denial being in violation of Section 10(b) (3) of the Act and Section 1622.1(e) of the Regulations.

16. The undisputed evidence at the trial shows that although the local board on the defendant's personal appearance believed him to be exempt as a minister of religion, that board denied him such ministerial classification, such denial being in violation of Section 10(b) (3) of the Act and Section 1622.1(e) of the Regulations.

17. The error of the court in excluding evidence tendered, by the defendant going to show prejudice exhibited by a local board member immediately before the defendant's hearing before the local board on July 14, 1952.

Karl M. Milgrom  
Attorney for Defendant

---

\* \* \*

**JUDGMENT AND COMMITMENT**

(Filed September 23, 1953)

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
Eastern Division

(Caption—53 CR 288)

\* \* \*

This cause this day being called for trial comes the United States by the United States Attorney comes also the defendant Anthony Tony Sicirella in his own proper person and by his counsel and the defendant being informed by the Court of his right to a trial by Jury waives that right in writing in open Court the United States Attorney consenting thereto and the Court approving such waiver and thereupon this cause is submitted to the Court for trial without a Jury and the trial proceeds and at the close of all the evidence the defendant by his counsel moves for a judgment of acquittal and the Court having heard the arguments of counsel and being fully advised in the premises it is

ORDERED that said motion be and the same is hereby overruled and the Court now having heard all the evidence adduced and being fully advised in the premises finds the defendant guilty as charged in the Indictment filed herein against him and the defendant being asked by the Court if he has anything to say why the sentence and judgment of the Court should not now be pronounced upon him and showing no good and sufficient reasons why sentence and judgment should not now be pronounced it is therefore considered and

ORDERED AND ADJUDGED by the Court and is the sentence and judgment of the Court upon the finding of guilty that the defendant ANTHONY TONY SICURELLA be and he is hereby committed to the custody of the Attorney General of the

United States or his authorized representative for and during the term and period of Two (2) YEARS and it is

FURTHER ORDERED that execution of sentence be and the same is hereby stayed for a period of 10 days.

Igoe  
United States District Judge

September 23, 1953

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\* \* \*

### TRANSCRIPT OF PROCEEDINGS

(Filed November 5, 1953)

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
Eastern Division

(Caption—53 CR 288)

\* \* \*

TRANSCRIPT OF PROCEEDINGS had in the above-entitled case taken before the Hon. MICHAEL L. GOOE, one of the Judges of said court without a jury in his court room in the United States Court House at Chicago, Illinois, on September 23, 1953, at 10:00 o'clock a.m.

\* \* \*

[Tr. 38]

MR. MILGROM: Your Honor, I would like at this point to call your attention to the fact that in my opening statement we

[Tr. 39]

admitted the failure of the defendant to submit to induction, and I should think that if that is what Mr. Parsons wants to prove with this witness, it would serve no purpose.

THE COURT: I understand he wants to prove by putting this witness on that the defendant refused to submit to induction?

MR. PARSONS: That is the offer.

THE COURT: You admit that happened?

MR. MILGROM: That is right.

THE COURT: Then there is no need of this testimony.

MR. PARSONS: The government heretofore has acknowledged but not accepted the offer to stipulate to the effect that the defendant has refused to submit to induction, but the government will accept a stipulation at this time providing that it states that this witness would testify the registrant was given not only the first opportunity to submit induction but he, after having the law read to him and subsequently an offer made for him to submit to induction, he then refused to submit.

[Tr. 40]

MR. MILGROM: We will so stipulate, your Honor.

THE COURT: Very well.

\* \* \*

[Tr. 41]

Wednesday, September 23, 1953  
2:00 o'clock p.m.

\* \* \*

[Tr. 42]

ANTHONY TONY SICURELLA,

called as a witness in his own behalf, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MILGROM:

Q Will you state your name?

## BY THE WITNESS:

A Anthony Tony Sicurella.

Q Will you speak louder so the Judge can hear you?

A Yes, sir.

Q You are the defendant in this case?

A Yes, sir.

Q Where do you reside, Mr. Sicurella?

A 2642 North McVicker's, Chicago, Illinois.

Q What is your age?

A 26.

Q Are you single or married?

A Single.

[Tr. 43]

Q Will you state the members of your family, please?

A My father is Tony, Tony Sicurella. My mother is Mrs. Tony Sicurella, my sisters are Jennie and Frances Sicurella, and I have three brothers, Pat Sicurella, Joseph Sicurella and Mike Sicurella.

Q What is your vocation?

A That of a minister.

Q Do you have any other activity?

A I engage in secular work which goes in with my ministry.

Q Are you an ordained minister?

A Yes.

Q When were you ordained?

A At about 1940.

Q Who appointed you?

A The Watch Tower Bible and Tract Society by Mr. Seeley.

Q What is the "Watch Tower Bible and Tract Society"?

A It is God's governing body here on earth.

Q Of the Jehovah Witnesses?

A Jehovah Witnesses, yes.

Q What is the religious faith of your parents?

A Jehovah Witnesses.

Q How long have they had that faith to your knowl-

edge?

[Tr. 44]

A Every since early childhood.

Q Your early childhood?

A Yes.

Q Were you brought up in that faith?

A Yes, I was.

Q You are registered with Local Draft Board 150?

A I am registered with Local Draft Board 14.

Q Is it 14?

A Yes.

Q Pardon me.

What is the address of Local Board 14?

A 226 West Jackson Blvd., Chicago, Illinois.

Q When did you file your selective service Questionnaire 100 with that Board?

A In about January of 1949.

Q What classification, if any, did you then claim?

A That of a minister, 4-D.

Q On that Form you did not claim "CO" status, did you?

A No, not at that time.

Q Why did you claim that status?

A Because I thought I had to claim either 4-D or 1-O, so I claimed the more important one to me, that of 4-D.

[Tr. 45]

Q Now, you filed a CO Form 150 with your local Board?

A Yes, I did.

Q And you claimed therein by reason of your religious training and belief as a conscientious objector to be opposed in any form of war?

A Yes.

Q You did so claim?

A Yes.

Q In that Form you also claimed to be a conscientious objector opposed to both combatant and non-combatant training and services in the Armed Forces?

A That is right.

Q What kind of a classification have you received from the local Board?

A 4-D and 1-A.

Q How many times were you classified 4-D?

A Two times, sir.

Q How many times were you classified 1-A by your local Board?

A About five times, sir.

Q What was the date when you received notice of your classification after you were classified last 1-A by the local Board?

[Tr. 46]

A The last date of the 1-A?

Q The time when you were last notified by the local Board that you were classified 1-A?

A That was in July, 1952.

Q Could it have been July 16, 1952?

A That is right, sir.

Q Did you have a hearing before your local Board immediately before they classified you?

A Yes, I did.

Q What was your classification before that hearing, immediately before it?

A I-A.

Q Now, this hearing that you just referred to where did it take place?

A At 226 West Jackson Blvd., Room 201.

Q That is in Chicago, Illinois?

A Yes, sir.

Q In what part of the building did the hearing take place?

A It was in the main office.

Q On what floor?

A The second floor.

Q When was the time of the hearing?

A It was scheduled for 8:00 o'clock.

[Tr. 47]

Q On what day?

A I don't recall the day.

Q Could it have been July 14, 1952?

A That is right, sir.

Q It was scheduled for 8:00 p.m.?

A Yes, sir.

Q Now, what persons, if any, went with you to that hearing?

A I was accompanied by my two brothers, Joseph Sicurella and Pat Sicurella.

Q What did you and your brothers do immediately before the hearing?

A We were told to have seats there, and we waited outside, in the outer office.

Q That is, you waited immediately outside of the hearing room?

A That is right, sir.

Q Now, you were seated, I take it, while you were waiting?

A Yes.

Q Which way were you facing?

A We had our backs at some partition they had in the office.

Q The partition between the waiting room and the

[Tr. 48]

hearing room?

A Yes.

Q That partition was about how tall? That is, what was the distance of the partition from the floor upwards?

A About eight feet, I would say.

Q What was the total height of the room, if you remember, about?

A Approximately,—about 15 feet.

Q What kind of a partition was it?

A It was fiber cardboard.

Q Now, while you and your brother were sitting there

waiting for this hearing did you observe anybody come out of the hearing room?

A Yes, we did. I looked at the door of the partition and I saw Mr. De Leonardis stick his head out of the door.

Q Who was Mr. De Leonardis?

A He was one of the Board Members.

Q Now, while you were so sitting outside of the hearing room, after you saw Mr. De Leonardis stick his head outside, what, if anything, did you hear?

MR. PARSONS: I object, your Honor. I think this is the proper place to interpose

[Tr. 49]

an objection.

(Whereupon Mr. Parsons argued his objection, following which Milgrom argued in opposition—not transcribed.)

THE COURT: Let me see if I understand this situation. The man whose statements he was to put into the record here—what was he, a member of the Board?

MR. PARSONS: He was a member of the local Board.

THE COURT: The local Board, not the Appeal Board?

MR. PARSONS: Not the Appeal Board.

THE COURT: Objection sustained.

MR. MILGROM: Let me just raise this point: I think, if I may point out to your Honor, that when the local Board does not have jurisdiction to begin with under the Estep case which we are trying to show by virtue of the fact that prejudice existed that makes everything else that follows afterwards in the Selective Service process void.

[Tr. 50]

Certainly, it is necessary for a proper classi-

fication of 1-A upon which to base an order of induction that the local Board have jurisdiction over the issue.

Now, if I can show prejudice, to begin with, on the part of the Local Board, it is without jurisdiction, then everything else falls in the selective service process and is void.

THE COURT: You may make your offer of proof so it will be in the record, but I will sustain the objection.

MR. MILGROM: There are other authorities your Honor. You have not heard all of them but I make my point with the Estep case.

THE COURT: Yes.

You may make your offer of proof.

MR. MILGROM: I offer to prove by this witness that while he and the two brothers were sitting outside of the hearing room, where the hearing was subsequently held about ten minutes later—

THE COURT: That is the appeal hearing you are talking about?

MR. MILGROM: No, I am talking about the

[Tr. 51]

hearing before the Local Board.

THE COURT: Yes?

MR. MILGROM: That the defendant heard Mr. De Leonardi, a member of the Local Board, say, "The Sicurella boys are outside. These boys are Jehovah Witnesses and strictly 1-A."

THE COURT: You object to that?

MR. PARSONS: I object to that testimony as being immaterial before any issue before the Court.

THE COURT: All right, proceed.

By MR. MILGROM:

Q Now, Mr. Sicurella, at the hearing which was held

before your Local Board on July 14, 1952, shortly after 8:00 p.m., who was then present?

BY THE WITNESS:

A There was myself, my two brothers, and three of the Board Members.

Q By your two brothers, you mean whom?

A Joseph Sicurella and Pat Sicurella.

Q Will you tell the Court what was said at this hearing?

A I said to Mr. De Leonardis, or explained to him I was a minister of the religion and then I related

[Tr. 52]

the time I spent in the service, the nature of my work was preaching from door to door and from the pulpit to a congregation of Jehovah Witnesses in Kingdom Hall, I preached on street corners, and contacted all persons having an interest in the admonition that God gives us.

He said to me—Mr. De Leonardis said to me that he believed me to be a true minister of religion because he has known me and my family since we kids were children, because we live in the same neighborhood; that he knew my father and he knew my mother.

He said that he would give me a 4-D classification if he could because he knew the entire family and he said, "I know you are entitled to it, according to the law, but the case is over my head."

When he said this he looked at the other two Board Members and they agreed and shook their heads in agreement.

Then I said to Mr. De Leonardis, "Then will you please pull out my CO Form? I would like to prove a little more to you of my standing."

Mr. De Leonardis said that it is no use

[Tr. 53]

to go into detail because the matter is over his head.

Q What, if anything else, was said that you can remember?

A Then, he started to talk to one of my brothers, that is, Mr. De Leonardis did.

MR. PARSONS: If the Court please, for the matter of the record, I know it is too late to offer an objection because I should have objected to this testimony before the answer was given, but for the record, I object for the same reasons that I objected before as to the testimony concerning what was said outside of the hearing room on the grounds that there has been an appeal from the actions of the Local Board.

Under the ruling in the Fletcher case and the Estep case, unless there is a record of something that happened before the Local Board it would affect the Appeal Board's decision. We feel this is immaterial to any issues before the Court.

THE COURT: Well, you have been all through this already.

MR. PARSONS: Yes, sir.

[Tr. 54]

THE COURT: Your objection comes too late as far as this is concerned.

BY MR. MILGROM:

Q Did you take an appeal from your 1-A classification which you received on July 16, 1952?

BY THE WITNESS:

A Yes, sir, I did.

Q And you took that within ten days of the time from the time of that classification?

A Yes.

Q On July 14, 1952?

A Yes.

Q What classification did you receive?

A 1-A.

Q Did you have a conscientious objector's hearing before Mr. Roy West?

A Yes, I did.

Q Where did that hearing take place?

A It took place on January 13, 1953.

Q At approximately what time?

A At 10:30 in the morning.

Q In the morning?

A Yes, sir.

Q Where did the hearing take place?

[Tr. 55]

A It took place in the library room of the Old Post Office Building.

Q You mean, this building here?

A Yes.

Q That was on the fourth floor?

A Yes, sir.

Q Aside from yourself and Mr. West who else was present at this hearing?

A I brought along with me some twelve witnesses from the congregation of Jehovah Witnesses from Kingdom Hall to testify as to my ministry.

Q Just a second. Just answer the question.

A Yes, sir.

Q And those people appeared before the hearing officers?

A Yes, they did.

Q Now, will you please tell the court what was said at that conscientious objector's hearing?

A The session opened up with Mr. Roy West telling me I had been investigated by the F.B.I. So, I asked Mr. Roy West if I could please see the file and the F.B.I. report.

Q Was the report in the file?

A The F.B.I.'s report was there. I asked for it.

[Tr. 56]

He said to me that there was no use because the F.B.I.'s report was favorable to you.

So, then I asked Mr. Roy West if he would please tell me what was in it. He said, "There is no use in telling you because it was favorable."

Q Then what, if anything, was said?

A Then Mr. Roy West asked me if I prayed daily before meals, and said my prayers at night before going to bed? I said, "Yes."

Then he asked me if I smoked, drank, or ran around?

I told him I did none of those things. Then he questioned one of the witnesses that I brought. He questioned one of them at a time; referred to them as taxpayers and should be heard.

All of the witnesses all affirmed my sincerity in my ministry, and some of the witnesses affirmed my sincerity since my childhood because they had known me ever since I was, —well, about five or six years old.

Q What else, if anything, was said?

A Then Mr. Roy West said to me, "I believe you to be a conscientious objector and I am going to

[Tr. 57]

recommend 1-O for you."

Then I thanked him and afterwards left.

Q Why did you refuse to submit to induction on March 5, 1953?

A Because I thought I was not properly classified and that would not give me the opportunity to carry out my vow to teach, as dictated to me by the Almighty God.

That is, in that I couldn't preach from door to door. Or follow the admonition of Jesus as stated in John 18:36:

"My Kingdom is not of this world. If my Kingdom were part of this world then would my servants fight."

In Acts 5:29 it says:

"We must obey God, rather than men."

Not only today am I already in the Army of Christ serving as a *soldier* of His, but if I should desert His forces and join another force, it would mean I would be a deserter and then I would be meted out punishment, death. Therefore, it is better to obey God rather than man.

[Tr. 58]

Q Now, how long have you had these views as you described them?

A Ever since I can remember.

Q How did you acquire such views?

A Through training of Bible education, starting with my folks and then attending regularly Bible Schools.

Q And you have attended such Bible schools for how long? Since when?

A Since about 1940.

Q How much time have you spent on an average per month from the start up to the present day in preaching?

A I would say on an average of forty hours or more a month.

Q What is the nature of your preaching?

A It is preaching from house to house, on the street corners, and from the pulpit to a congregation of Jehovah Witnesses in Kingdom Hall.

MR. MILGROM: Your witness.

#### CROSS-EXAMINATION

By MR. PARSONS:

Q Mr. Sicurella, I am going to show you Government's Exhibit 2, which is in evidence and which includes

[Tr. 59]

a number of parts, marked 2-E through 2-AU, and ask you some questions about these exhibits.

A Yes, sir?

Q I show you Government's Exhibit 2-E, which is the Selective Service system classification questionnaire, and on the seventh page of this exhibit is the signature of "Anthony T. Sicurella".

That is your signature?

A Yes.

Q You filled out this questionnaire, did you not?

A Yes, I did.

Then you were the person who placed on this questionnaire opposite the questions, that is, as to whether or not you are a minister, the statement, "I am a minister of the religion," is that correct?

A Yes, I did.

Q And you answered:

"I do regularly service as a minister."

A That is correct, sir.

Q And that is your signature, and your handwriting filled in the answer to the question:

"I have been a minister of Jehovah's Witnesses since 1934."†

A That is right.

[Tr. 60]

Q And you said:

"I have been formally ordained."

Is that right?

A That is right.

Q You also filled in Series 2 of that questionnaire, didn't you?

A Yes, sir.

Q Which states:

"I am a student preparing for the ministry—"

Is that right?

A Yes, I did.

Q That is correct?

A Yes.

Q And you said:

"I am attending the Kingdom Hall located at 2357 S. Lawndale."‡

A That is right.

Q You filled that in, did you not?

A That is right.

Q And you said:

"I am a student preparing for the ministry under the direction of Watch Tower Bible & Tract Society—"

You filled that in, did you not?

[Tr. 61]

A Yes, sir, I did.

Q Mr. Sicurella, you also filled in, did you not, the part of this questionnaire that is marked Series VIII, and under Figure 2 where you said:

"The job I am now working at is clerk—"

Is that right?

A That is right.

Q And following that under Figure 3 you said:

"I do the following kind of work in my present job, file clerk."

Did you put that in?

A That is right, yes, I did.

Q And you said:

"4(a) I worked 5 years in my present trade—"

Is that right?

A Yes, that is right.

Q And you said further:

"—and I do expect to continue indefinitely in it."

That is your statement?

A That is right.

Q And you said:

"My employer is Railway Express Agency, 817 S. Wells."

[Tr. 62]

Is that right?

A That is right, sir.

Q And you said:

"Whose business is expressing,"

Is that right?

A That is right, sir.

Q And you said:

"I work an average of 44 hours per week."

Is that right?

A That is right, sir.

Q Mr. Sicurella, at the time you filled in that questionnaire had you ever read the rules and regulations of the Selective Service Act relating to the ministry or stu-

dents of the ministry?

A I might have, yes.

Q Do you recall the rules and regulations which define or constitute the ministry?

A I don't think I have, no.

Q Had anyone told you about the regulation which provides that in Class 4-D shall be placed any registrant:

"Who is a student preparing for the ministry under the direction of a recognized church or religious

[Tr. 63]

organization and who is satisfactorily pursuing a full-time course of instruction leading to entrance into a recognized theological or divinity school in which he has been pre-enrolled."

Or:

"When used in this title, the term 'duly ordained minister of religion' means a person who has been ordained, in accordance with the ceremonial, ritual, or discipline of a church, religious sect, or organization established on the basis of a community of faith and belief, doctrines and practices of a religious character, to preach and to teach the doctrines of such church, sect, or organization and to administer the rites and the ceremonies thereof in public worship, and who as his regular and customary vocation preaches and teaches the principles of religion and administers the ordinances of public worship—"

Now, do you remember having been told that a minister under the Selective Service Act must regularly and as a custom of his vocation preach?

[Tr. 64]

A Have I been told that?

Q Yes! Were you not told that at the time you filled in this questionnaire?

A Not at the time I filled out the questionnaire, no.

Q Do you know or have you been told since then that to be classified as a minister under the Selective Service Act you must be a full-time minister?

MR. MILGROM: That is objected to. It calls for a conclusion.

THE COURT: Objection sustained.

BY MR. PARSONS:

Q You stated, did you not, you filled in Form 150 of the Selective Service? You stated in your direct examination you did that, did you not?

BY THE WITNESS:

A That I filled in 150? Is that the question?

Q Yes?

A Yes, I filled that in.

Q Is this your signature here on page 1 of that Form?

A Yes, it is.

Q And on the supplement which is added to the Form?

A That is right, sir.

[Tr. 65]

Q (Continuing) At the end of the Form there?

A That is right, sir.

Q And it was you who typed on to this Form, was it not, the answer to the question No. 5 which says:

"Under what circumstances, if any, do you believe in the use of force?"

A Yes.

Q It was you who answered this:

"Only in the interests of defending Kingdom Interests, our preaching work, our meeting's, our fellow *brethren* and sisters and our property against attack."

A Yes, I did.

Q It was you who added the supplement to this, is that correct?

A Yes, I did.

Q Mr. Sicurella, you were classified 4-D on March 1, 1949, isn't that right?

A Yes, sir.

Q And you were classified 1-A on October 9, 1950. Do you recall that?

A I think I do, yes.

Q And you requested a hearing from your Local Board as to that classification, did you not?

[Tr. 66]

A Yes, I did.

Q You were granted that hearing?

A Yes, I was.

Q After this hearing, you were kept in 1-A classification, were you not, or were you reclassified?

A I don't understand the question?

Q I will rephrase the question:

Following that hearing, you were reclassified 1-A, were you not?

A After the hearing, yes.

Q At that time, you appealed from that Local Board's classification, did you not?

A Yes, I did.

Q Your appeal was you should have been classified as a minister?

A That is right.

Q And as far as you know the Appeal Board made a determination itself, did it not?

MR. MILGROM: That is objected to, as far as he knows.

THE COURT: Objection sustained.

By MR. PARSONS:

Q Do you know what action, if any, was taken by the Appeal Board?

[Tr. 67]

A I remember getting another 1-A.

Q Do you remember from whom you received that classification?

A No, I don't.

Q Would you recall receiving it if you should see a copy of the notice of that classification?

A I would recognize it, yes.

Q I will show you Government's Exhibit 2-R. Do

you recall receiving a copy of that document?

A Yes, I think I do.

Q And the classification is 1-A at the bottom, is that correct?

A Yes.

Q Under the title, "Minutes of Action by Appeal Board."

MR. MILGROM: I may be mistaken but that Exhibit Mr. Parsons just referred to, I think, is one which the registrant never gets a copy of. That is the individual appeal record. That is before the local Board.

THE COURT: Well, is there any dispute about that, as to what the result of it was?

MR. MILGROM: He was notified as to the

[Tr. 68]

ruling. There is no dispute about that.

BY MR. PARSONS:

Q Then you filled in Form 150 (Government's Exhibit 2-W), is that correct?

A Yes, I did.

MR. MILGROM: May I see that Form, the one you just referred to? The one you referred to before, I mean?

MR. PARSONS: Yes, sir.

(Whereupon Mr. Parsons handed Mr. Milgrom a document.)

MR. MILGROM: Thank you. Go ahead.

BY MR. PARSONS:

Q After you filled in 150 Form (Government's Exhibit 2-W), do you recall whether or not your Local Board classified you again?

BY THE WITNESS:

A I think I got another 1-A, yes.

Q Did you appeal from that classification?

A Yes, I did.

MR. MILGROM: Just to keep the records straight, I think this exhibit shows that after he filed his 150 Form his next classification which he received as 4-D on

[Tr. 69]

March 12, 1951, from his Local Board.

MR. PARSONS: Thank you.

BY MR. PARSONS:

Q The classification notice which you received was the 1-A classification, isn't that correct?

BY THE WITNESS:

A Yes, sir, it was.

Q Did you ask for an appearance before the Local Board following that classification?

A Yes, I did.

Q Were you granted that appearance?

A I was, yes.

Q Following that appearance, were you classified again?

MR. MILGROM: You might possibly refer to dates, Mr. Parsons? There are quite a few here!

BY MR. PARSONS:

Q Did you receive a 1-A classification on April 7, 1952? Do you recall receiving one then?

BY THE WITNESS:

A When?

Q In 1952?

A No, I don't recall a 1-A then.

[Tr. 70]

Q Following your appearance before the Local Board, the last time, did you receive a notice of classification?

MR. MILGROM: That is referred to as July 14,

1952, Mr. Parsons.

MR. PARSONS: Yes?

THE WITNESS: Will you state your question again?

BY MR. PARSONS:

Q Following your appearance the last time before the Local Board did you receive then a notice of classification?

BY THE WITNESS:

A Yes, I did.

Q Do you recall that classification?

A The last classification was a 1-A.

Q Did you appeal from that classification?

A Yes, I did.

Q You testified you appeared before Roy West?

A That is right.

Q He is the hearing officer of the Department of Justice, isn't that correct?

A That is right, sir.

Q Who handles hearings for recommendations of

[Tr. 71]

appeal of conscientious objectors, isn't that right?

A Yes, sir.

Q Following that appeal you received another classification, did you not?

A I did, yes.

Q What was that classification?

A 1-A.

Q 1-A?

A Yes, sir.

Q Following that final 1-A classification, you were ordered to report for induction, weren't you?

A Yes, I was.

Q You reported?

A Yes, I did.

Q You took an examination?

A Yes, I did, sir.

Q You were given an opportunity to go into the service?

A Yes, I was.

Q Did you go in?

A No, I didn't.

Q After the first opportunity, you were given a second opportunity in a smaller room?

A Yes, I was.

[Tr. 72]

Q Before that second opportunity was given to you the officer there read certain regulations to you, didn't he?

A He did, yes.

Q And then he gave you another opportunity to submit? Didn't he?

A That is right, sir.

Q And you didn't go in?

A No, sir.

Q Let me show you Government's Exhibit 2—a part of that exhibit which is marked 2-X which is in evidence. I will ask you to look at it?

A Yes, sir.

Q You have looked, Mr. Sieurella, in this file? This is the file, is it not?

A It is, yes, sir.

Q Have you ever had an opportunity to look at it before now?

A I went through it, yes, once.

Q Have you ever asked the Board to let you look at it and then been refused that privilege?

A No, I haven't been refused the privilege. I have seen it.

Q Do you recognize this (indicating) letter as

[Tr. 73]

having been a part of the file? This letter, Mr. Sieurella, from Mr. Paul G. Armstrong? This is the letter addressed to Local Board 14 of the Selective Service System which

says:

"Will you please forward the cover sheet of the captioned registrant to his office for review by the State Director."

**THE COURT:** Can you answer the question?

**THE WITNESS:** What was the question?

**BY MR. PARSONS:**

**Q** Do you recognize that letter? Have you seen that?

**BY THE WITNESS:**

**A** No, I don't recognize it.

**Q** Let me show you this Exhibit 2-Z which is a letter from Paul Armstrong to Local Board #14 which states:

"Gentlemen:

Thank you for forwarding the cover sheet of the captioned registrant to this office for review.

We are returning herewith the cover sheet with the request that this registrant be considered for a classification of 4-D inasmuch as there is evidence in the cover sheet that the registrant is a minister of

[Tr. 74]

religion. There is also in the cover sheet a Form 150 Special Form for Conscientious Objector.

In the event the local board, after reconsideration of the case, retains the registrant as class 1-A, it should be forwarded to the Appeal Board for action in accordance with the regulations."

You remember reading that in the file?

**A** Yes, I do.

**Q** Do you recall writing to the local board on February 1, 1950?

**THE COURT:** What is the date of that last letter you read?

BY MR. PARSONS:

Q Will you look at that exhibit again? What is the date on which the letter was received by the Board?

BY THE WITNESS:

A February 23, 1951.

Q Do you recall writing the Local Board on February 1, 1951, this letter? I show you Government's Exhibit 2-V and ask you if you recall writing that letter?

A I recognize the letter, yes.

Q Do you remember placing in that letter this

[Tr. 75]

statement:

"Since you the Local Board and the Appeal Board both have abused your discretion in improperly classifying me as 1-A instead of 4-D, an ordained minister, I am herewith informing you that I am also appealing my case to the President of the United States and also the Director of the Selective Service System, General Lewis B. Hershey. I will notify you of the results."

Did you write to General Hershey?

A Yes, I did.

Q Now, Mr. Sicurella, when you appeared before your local board you stated you brought with you your two brothers, is that correct?

A That is right.

Q And they went into the local board with you?

A That is right.

Q And into the hearing room with you?

A Yes, sir.

Q When you appeared before Colonel West you stated you brought twelve witnesses with you, did you not?

A Yes, I did.

Q Colonel West didn't keep any of them out, did he?

[Tr. 76]

A No, he didn't.

Q He didn't stop any of them from talking if they wanted to?

A No, sir, he didn't.

Q At the time you appeared before your local board, you had sent to the local board, had you not, certain letters and statements bearing upon your claim for exemption, isn't that true?

A That is right, sir.

Q You had sent in an affidavit by one Theodore A. Savoas?

MR. MILGROM: That is referring to what exhibit?

MR. PARSONS: 2-F.

BY THE WITNESS:

A Yes.

BY MR. PARSONS:

Q Let me show you Exhibit 2-H. You sent in that letter to the local board, did you not?

A Yes, I did.

Q Concerning your *ministerial* duties?

A Yes, I did.

Q On November 5—this is Exhibit 2-J. Let me show you this—

[Tr. 77]

MR. MILGROM: Of what year?

BY MR. PARSONS:

Q 1950, which bears the signatures of some eighteen persons testifying to your preaching. You sent that to your local board, did you not?

BY THE WITNESS:

A Yes, I did.

Q I show you this Exhibit 2-K signed by George H. Lenz. You sent that to your local board?

A Yes, I did, sir.

Q Those were in your file when you looked in the file, were they not?

A Yes, sir, they were.

Q Did you notice whether they were in the file when you appeared before your local board?

A At the time I asked for the file I didn't see them but I saw them before.

Q You had seen them in the file before?

A Yes, I did.

Q They were before the Board at the time you appeared before the Board?

A That is right, sir, yes, sir.

Q And they were in the file when you appeared before Col. West, were they not?

[Tr. 78]

A Col. West didn't have the file before him.

Q But you had seen them in the file before you appeared before Col. West?

A I did, yes.

Q Let me go back to this Form 150 which is marked 2-W. Will you look that over, please?

(Whereupon counsel handed the witness a document.)

A Yes, sir.

Q You recognize that Form again, don't you?

A Yes, I do.

Q It was you who stated on this Form, was it not, the following:

"I am already in the Army of Christ Jesus serving as soldier of Jehovah's appointed Commander Jesus Christ."

And then you quoted a scripture as follows:

"(2 Tim : 2:3 & 4). Inasmuch as the war weapons of the soldier of Jesus Christ are not carnal, I am not authorized by his commander to engage in carnal warfare of this world."

You filled in that and sent it to the local board, didn't you?

[Tr. 79]

A Yes.

Q And at the time you appeared before Col. West you had sent this into your local board?

A I assume it was, yes.

Q Do you recognize the date on it?

A February 9,—

Q Did you send it in on this date?

A I sent it in on the 5th.

Q The 5th of what year?

A The 5th of February.

Q 19— of what year?

A I guess that is right, 1951.

Q When was the hearing before Col. West?

A January 13th of this year, 1953.

Q Do you recall the date of your hearing before the local Board when you submitted this 150 Form?

A Will you repeat that?

Q Do you recall approximately when the hearing was before the local Board? Was it following your submission of this 150 Form?

A You mean, as to this Form here?

Q Yes?

A I believe it was a year after that.

Q It was a year after this Form was sent in?

[Tr. 80]

A Yes, it was.

MR. PARSONS: That is all.

#### REDIRECT EXAMINATION

BY MR. MILGROM:

Q Mr. Sicurella, calling your attention to the Selective Service Form 100, which is in evidence as Government's Exhibit 2-E, Series VI, wherein you state:

"I am a minister of religion.  
I do regularly serve as a minister.  
I have been a minister of Jehovah's Witnesses since  
1934."

And you say:

"I am a student preparing for the ministry under the direction of Watch Tower Bible & Tract Society in a theological or divinity school."

Then you have this statement:

"I am a student preparing for the ministry under the direction of Watch Tower Bible & Tract Society, pursuing a full time course of instruction leading to my entrance into—"

And then you say:

"None yet."

[Tr. 81]

Now, what do you mean by those statements that you made in 2 and 3 under Series VI, which I just referred to? Why did you put those statements in there?

A Why did I say I was a minister and a student both?

Q Right?

A Well, just because one becomes a fulltime minister does not mean he is not a student, but after one does graduate he still continues to be a student so as to become more acquainted with the subject of ministry work. So, therefore, I still consider myself a student, plus being a minister today.

Q And you did at the time you filled out this questionnaire?

A Yes, I did.

MR. MILGROM: That is all.

#### RECROSS-EXAMINATION

By MR. PARSONS:

Q Did I understand you to say, Mr. Sicurella, you consider yourself to be a student today of the ministry?

BY THE WITNESS:

A Yes, sir.

Q As well as a minister?

[Tr. 82]

A That is right.

Q When did you start being a student of the ministry?

A About 1940.

Q So, you continued as a student from 1940 until now and that would be some thirteen years, is that right?

A That is right, sir.

Q How long will you continue to be a student of the ministry?

A I will continue as long as I am a minister; a student and a minister, because I know myself even though I am a minister I will never know everything there is to know about the ministry.

MR. PARSONS: That is all.

MR. MILGROM: Nothing further.

THE COURT: I understand he was ordained in 1934 as a minister, is that right?

MR. PARSONS: As a minister.

BY THE WITNESS:

A No, sir, it was 1940. I have been brought in it since 1934.

THE COURT: You have been a student since 1934. When were you ordained as a minister?

THE WITNESS: About 1940.

[Tr. 83]

THE COURT: All right.

MR. PARSONS: That is all.

THE COURT: Is that all?

MR. PARSONS: Well, may I ask one additional question in line of the Court's question?

THE COURT: Yes.

BY MR. PARSONS:

Q You had filled in the statement here where it says, "I have been a minister of Jehovah's Witnesses since 1934," isn't that correct?

BY THE WITNESS:

A That is right.

THE COURT: That is what I understood you to say.

THE WITNESS: Yes.

MR. PARSONS: That is all.

MR. MILGROM: Just one more question.

REDIRECT EXAMINATION

BY MR. MILGROM:

Q By that do you mean you have been preaching since 1934?

BY THE WITNESS:

A Yes, that is right.

Q But you were formally ordained at a later date?

[Tr. 84]

A That is right.

THE COURT: "Formally ordained" when?

MR. MILGROM: At a later date.

THE COURT: What do you mean by that?

MR. MILGROM: In 1940.

THE COURT: All right.

MR. MILGROM: That is all.

THE COURT: Call your next witness.

(Witness excused)

[Tr. 85]

MR. MILGROM: We will call Pat Sicurella.

PAT SICURELLA,

called as a witness on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MILGROM:

Q Will you state your name?

BY THE WITNESS:

A Pat Sicurella.

Q Your address?

A 2642 North McVickers.

Q Chicago, Illinois?

A Chicago, Illinois.

Q You are a brother of the defendant Anthony Tony Sicurella?

A I am.

Q Now, calling your attention to July 14, 1952, at approximately eight p.m., did you have an occasion to accompany him to his local draft board No. 14 at 226 West Jackson Blvd., Chicago, Illinois?

A I did.

Q Who was with you aside from the defendant and [Tr. 86]  
yourself?

A My other brother, Joseph Sicurella.

Q Tell the Court what, if anything, you heard said before the hearing?

MR. PARSONS: I object, your Honor.

THE COURT: That is the same testimony as before?

MR. MILGROM: Yes, sir.

THE COURT: You make an objection?

MR. PARSONS: Yes, sir.

THE COURT: And you make the same offer again?

MR. MILGROM: I offer to prove by this witness

that while he and the defendant and his other brother were sitting in the room outside of the hearing room of Local Board 14, at 226 West Jackson Blvd., prior to the hearing of his brother, the defendant, scheduled at 8:00 p.m., on July 14, 1952, that this witness heard Mr. De Leonardis, a member of Local Board 14 say, "The Sicurella boys are outside. These boys are Jehovah Witnesses and strictly 1-A."

This witness would also testify if

[Tr. 87]

allowed to that he had known Mr. De Leonardis since his childhood and was familiar with his voice.

That is my offer.

THE COURT: You renew your objection?

MR. PARSONS: I make the same objection.

THE COURT: The same ruling.

Q Mr. Witness, you attended the hearing that your brother, the defendant, had on July 14, 1952, shortly after 8:00 p.m.?

BY THE WITNESS:

A I did.

Q That was before Local Board 14 at 226 West Jackson Blvd., Chicago, Illinois?

A Correct.

Q Will you tell the Court what was said at this hearing?

A Well, my brother presented his argument that he was granted 4-D rightfully and that it was taken away from him and no reason given for it.

He went into detail on form 150 but Mr. De Leonardis said there was not any use in going into detail about it because the case is over his

[Tr. 88]

head and he couldn't do anything about it.

He also stated he was personally acquainted with us boys and the family since we were children and if it was up to him he would grant us 4-D because we were rightfully entitled to it by law. And he looked to the Board members who shook their heads in agreement.

MR. PARSONS: Acknowledging, your Honor, the tardiness of my objection, I ask leave for the purpose of the record that it show that the Government does even at this time object on the ground it is immaterial to any issues properly before the Court, since the registrant filed an appeal and was granted an appeal.

THE COURT: Well, the testimony is all in now.

MR. MILGBOM: That is all.

MR. PARSONS: No cross-examination.

THE COURT: Call your next witness.

(Witness excused)

MR. MILGBOM: Could we have a short recess, your Honor?

THE COURT: Yes, we will take a recess.

(Recess taken.)

THE COURT: All right, you may proceed.

[Tr. 89]

MR. MILGBOM: We will call Joseph Sicurella.

**JOSEPH SICURELLA,**

called as a witness on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

**DIRECT EXAMINATION**

BY MR. MILGBOM:

Q Will you state your name?

BY THE WITNESS:

A Joseph Sicurella.

Q What is your address?

A 2642 North McVickers Avenue, Chicago, Illinois.

Q You are a brother of the defendant Anthony Tony Sicurella?

A That is right.

Q Did you attend a hearing with your brother, the defendant, and your other brother, Pat Sicurella, which was held before Local Board 14 at 226 West Jackson, Chicago, Illinois, on July 14, 1952, set for 8:00 p.m.?

A I did.

Q Were you present with the defendant and Pat Sicurella, immediately outside of the hearing room,

[Tr. 90]

before the hearing was then granted the defendant?

A I was.

Q Will you tell what, if anything, you heard while you and your two brothers, the defendant and Pat Sicurella, were waiting for the hearing of your brother before Local Board 14 at that time.

MR. PARSONS: I object to that, your Honor, on the grounds it is immaterial.

THE COURT: The same situation as encountered before?

MR. MILGROM: That is right.

THE COURT: The objection is sustained. You may make your offer of proof.

MR. MILGROM: I offer to prove by this witness here that on July 14, 1952, at about 8:00 p.m., while this witness, the defendant and this witness' brother, Pat Sicurella, were sitting outside of the hearing room of Local Board 14, at the hearing pertaining to the defendant, this witness heard Mr. De Leonardis, member of the Local Board state, "The Sicurella boys are outside. They are Jehovah Witnesses and strictly 1-A."

I also offer to prove by this witness

[Tr. 91]

that at that time he knew the voice of De Leonardis, he having lived in the same neighborhood previous.

MR. PARSONS: We make the same objection.

THE COURT: The objection will be sustained.

BY MR. MILGROM:

Q Now, did you attend the hearing that your brother had before Local Board 14 on July 14th at about 8:00 p.m.?

BY THE WITNESS:

A I did.

Q Who else was present at that hearing?

A There was Anthony and Pat, and also Mr. De Leonardis and two other Board members.

Q To the best of your recollection, tell the court what was said at that hearing?

A At the hearing during the course of the conversation, Mr. De Leonardis had said that if it was in his power or within his hands he would have given my brother the 4-D classification, but because it was above his head, why, there isn't anything I can do about it.

Q What, if anything, do you recall that was said at the hearing?

[Tr. 92]

A Well, continuing on, Anthony had asked to see the file and Mr. De Leonardis had made the statement to the effect, "There is not any use in going over there because it is more or less an open and shut case."

Q Do you recall anything else that was said at the time?

A No, offhand, I can't say I do. Although it turned out to be more or less a general hearing.

Q Well, you don't recall anything else that was said?

A No.

MR. PARSONS: May it please the court, the

government at this time acknowledges it is too late for it to object to the questions and answers immediately preceding hereto but for the purpose of the record ask leave to acknowledge that it should have objected on the grounds the testimony was immaterial to any of the issues.

THE COURT: Let the record so show that.

MR. MILGROM: That is all.

MR. PARSONS: No questions.

THE COURT: That is all, Mr. Witness.

\* \* \*

\* \* \*

## GOVERNMENT'S EXHIBIT 2

(Filed November 4, 1953)

[Immaterial portions of all printed, mimeographed, etc. form documents in this exhibit are omitted in printing. Handwritten or typewritten material is distinguished from printed-form wording by *italics*.]

### SELECTIVE SERVICE SYSTEM COVER SHEET

Name (Last) *Sicurella* (First) *Anthony* (Middle) *Tony*  
Address *1105 S. Hermitage Ave.*

(City or town) *Chicago*, . . . (State) *Ill.* . . . Race *White*

Selective Service Number *11 14 27 188*

Date of Birth (Month) *6* (Day) *13* (Year) *1927*

*Local Board #14*

*Chicago Area Office #1*

*(9) 11 48*

(Stamp of Local Board)

*Local Board No. 14  
 Selective Service System  
 AUG 14 1952  
 226 West Jackson Blvd.,  
 Chicago 6, Illinois*

Date of registration **9-11-48**

Date of mailing Questionnaire **1-6-49**

**Changes of Address:**

1. (Number and street . . . ) **2642 N. McVickers Ave.**  
 (Date) **1-15-49** (City, town, or village) **Chicago** (Zone) **39**  
 (State) **Ill**

\* \* \*

**1621**

**6952**

**8336**

**Classification**

<b>Date</b>	<b>Class</b>	<b>Date of Expiration</b>
<b>3-7-49</b>	<b>4-D</b>	
<b>10-9-50</b>	<b>1-A</b>	
<b>11-8-50</b>	<b>1-A</b>	
<b>1-27-51</b>	<b>1-A</b>	
<b>3-12-51</b>	<b>4-D</b>	
<b>3-17-52</b>	<b>1-A</b>	
<b>7-14-52</b>	<b>1-A</b>	<b>ACC</b>

\* \* \*

**SSS Form No. 101**

**GOVERNMENT'S EXHIBIT 2 A**

**SELECTIVE SERVICE SYSTEM  
 REGISTRATION CARD**

**SSS Form No. 1**

\* \* \*

Selective Service Number **11 14 27 188 . . .**

1. Name (Last) *Sicurella* (First) *Anthony* (Middle) *Tony*
  2. Place of residence *1105 S. Hermitage Ave.* (City, town, village, or county) *Chicago* (State) *Illinois*  
\* \* \*
  5. Date of birth (Month) *June* (Day) *13* (Year) *1927*
  6. Place of birth (City, town, village, or county) *Boston* (State or country) *Mass.*
  7. Occupation *Full Time Student*
  8. Firm or individual by whom employed *None*  
\* \* \*
13. Marital status: Single X

[Page 2]  
\* \* \*

I affirm that I have verified the foregoing answers and that they are true:

(Signature of registrant) *Anthony Tony Sicurella*  
\* \* \*

(Date of registration) *Sept. 11, 1948*

(Signature of registrar) *Verne G. Carey*

Registrar for local board (Number) *Area 1* (City or County) *Chgo* (State) *Ill*  
\* \* \*

\_\_\_\_\_

\* \* \*

## GOVERNMENT'S EXHIBIT 2 D

SELECTIVE SERVICE SYSTEM  
DELINQUENT REGISTRANT REPORT

AUG 10 1953

(Local Board Stamp)

\* \* \*

*August 10 1953 (Date)*

To: Hon. Otto Kerner Jr., United States Attorney.

\* \* \*

1. Identification of Delinquent:

Full name of delinquent: (Last) *Sicurella* (First) *Anthony* (Middle) *Tony*

\* \* \*

Selective Service No.: *11 14 27 188*

\* \* \*

2. Offenses:

This delinquent failed to report for induction into the Armed Forces pursuant to . . . X Order to Report for Induction (SSS Form No. 252). . . .

The order indicated was mailed on (Date of mailing) *February 19 1953* to this delinquent at (Address) *1105 So. Hermitage Ave., Chicago, Ill.* to report on (Date) *March 5, 1953*

\* \* \*

SSS Form No. 301

[Page 2]

\* \* \*

5. Remarks: . . . *Registrant reported for induction on March 5, 1953; but refused to be inducted.*

\* \* \*

---

**GOVERNMENT'S EXHIBIT 2 E**

**SELECTIVE SERVICE SYSTEM  
CLASSIFICATION QUESTIONNAIRE**

Selective Service No. *11 14 27 188*

Date of Mailing *January 5th, 1949*

Name: (Last) *Sicurella* (First) *Anthony* (Middle) *Tony*

\* \* \*

**JAN 5 1949**

(Stamp of Local Board)

\* \* \*

This questionnaire must be returned on or before  
**January 15th, 1949**

*H. J. Bittle*

Clerk or Member of Local Board.

\* \* \*

SSS Form No. 100

[Page 2]

\* \* \*

**Statements of the Registrant**

**Series I.—Identification**

\* \* \*

5. My Social Security number is (If none, write  
"None") **351-14-2585**

**Series II.—Present Members of Armed Forces**

\* \* \*

[Page 3]

\* \* \*

**Series III.—Prior Military Service**

\* \* \*

**Series IV.—Officials Deferred by Law**

\* \* \*

**Series V.—Sole Surviving Son**

\* \* \*

**Series VI.—Minister, or Student Preparing for the Ministry**

\* \* \*

1. (a) I (am, am not) *am* a minister of religion. (b) I (do, do not) *do* regularly serve as a minister. (c) I have been a minister of the (Name of sect or denomination)

*Jehovah's Witnesses since . . . 1934 (d) I (have, have not) have been formally ordained. (e) If so, my ordination was performed on (Month) Jan . . . (Year) 1944 by (Ecclesiastical official performing the ordination) Mr. Seeley at (City and State) Chicago, Illinois.*

2. (a) I (am, am not) *am* a student preparing for the ministry under the direction of (Name of church or religious organization) *Watchtower Bible & Tract Society* in a theological or divinity school. (b) I am attending the (Name of theological or divinity school) *Kingdom Hall* located at 2357 S. Lawndale

3. I (am, am not) *am* a student preparing for the ministry under the direction of (Name of church or religious organization) *Watchtower Bible & Tract Society*, pursuing a full time course of instruction leading to my entrance into (Name of theological or divinity school) *None Yet . . .*

[Page 4]

Series VII.—Family Status and Dependents

\* \* \*

1. (a) I have never been married X . . .

\* \* \*

3. I have (Number) 4 persons other than those shown above wholly or partially dependent upon me for support.

\* \* \*

Series VIII.—Present Occupation

1. . . . (b) I am now working in a nonagricultural occupation. X

\* \* \*

2. The job I am now working at is . . . *clerk*

3. I do the following kind of work in my present job . . . *file clerk*

4. In my present job, I am (a) a regular or permanent employee, working for . . . other compensation X; I have worked 5 years in my present trade, and I (do, do not) *do* expect to continue indefinitely in it.

\* \* \*

5. My employer is (Name of organization or proprietor, not foreman or supervisor; write "Self" if self-employed) *Railway Express Agency . . . 817 S. Well, . . . whose business is . . . expressing*

6. (a) I was employed by present employer on (Date) *Jan. 14, 1944*

(b) I entered job described in Statements 2 and 3, this series, on (Date) *June 5, 1948*

[Page 5]

(c) I am paid at the rate of \$229.07 per . . . month X.

(d) I work an average of 44 hours per week.

\* \* \*

Series IX.—Agricultural Occupation

\* \* \*

[Page 6]

Series X.—Education

1. I have completed (Number) 8 years of elementary school, (Number) 2 years of junior high school, and (Number) 2 years of high school. —

2. I (was, was not) was graduated from high school.

\* \* \*

Series XI.—Students

\* \* \*

[Page 7]

Series XIV.—Conscientious Objection to War

[Blank not signed.]

\* \* \*

Series XV.—Physical Condition

\* \* \*

1. Do you have any physical or mental condition which, in your opinion, will disqualify you from service in the Armed Forces? Yes X . . .

2. If the answer to Question 1 is "Yes," state the con-

dition from which you are suffering *nervousness chronic appendicitis & defective hearing*

\* \* \*

### Registrant's Statement Regarding Classification

\* \* \*

In view of the facts set forth in this questionnaire it is my opinion that my classification should be Class 4-D.

\* \* \*

### Registrant's Certificate

\* \* \*

I, *Anthony T. Sicurella*, certify that I am the registrant named and described in the foregoing statements in this questionnaire; that I have read (or have had read to me) the statements made by and about me, and that each and every such statement is true and complete to the best of my knowledge, information, and belief. The statements made by me in the foregoing (are, are not) [blank] in my own handwriting.

*Anthony T. Sicurella*

(Signature or mark of registrant)

\* \* \*

[Page 8]

\* \* \*

Dates	Minutes of Actions by Local Board and Appeal Board	Vote Yes	Vote No
MAR 1 - 1949	4 D . . . [3 initials]	3	0
3-8-49	Mailed Form 110 (Notice of Class)		
9-20-50	Mailed Form 390 to appear before board 9-26-50 Write to state for law on the Jehovahs Witnesses before board will act . . . [3 initials]		
OCT 9 1950	I A . . . [3 initials]	3	0
OCT 10 1950	SSS Form No. 110 Mailed		
10-17-50	Call in for Hearing		
11-3-50	Mailed Form 390 to appear before bd.		

	<i>11-8-50 with evidence</i>		
11-8-50	<i>I A . . . [3 initials]</i>	3	0
11-9-50	<i>Mailed Form 110</i>		
11-15-50	<i>Letter of Appeal Received</i>		
11-21-50	<i>Form 223 Mailed</i>		
11-27-50	<i>Found Acceptable for Military Service</i>		
12-8-50	<i>Form 62 Mailed</i>		
12-8-50	<i>Cover Sheet forwarded to Appeal Board</i>		
1-17-51	<i>Appeal Board classified I-A</i>	4	0
1-22-51	<i>Cover Sheet returned from B/a</i>		
1-22-51	<i>Form #110 mailed</i>		
2-5-51	<i>Requested and secured new Form 150</i>		
2-9-51	<i>Completed Form 150 received</i>		
2-16-51	<i>Complete Cover Sheet forwarded to St. Director for review, per request</i>		
2-15-51			
MAR 12 1951	<i>4 D . . . [3 initials]</i>	3	0
MAR 13 1951	<i>SSS Form No. 110 Mailed</i>		
3/10/52	<i>Cover Sheet forwarded to State Headquarters for review and recommendation. eg</i>		
3-17-52	<i>I A . . . [3 initials]</i>	3	0
MAR 18 1952	<i>SSS Form No. 110 Mailed</i>		
3/24/52	<i>Letter dated 3/20/52 received from registrant requesting personal appearance. eg</i>		

[Page 9]

\* \* \*

	<i>April 1, 1952 Letter ordering registrant to appear before board April 7, 1952</i>		
4-7-52	<i>I A . . . [3 initials]</i>		
4/8/52	<i>SSS Form 110 mailed eg</i>		
4/18/52	<i>Letter of appeal received from registrant eg</i>		
4/18/52	<i>File forwarded to Appeal Board eg</i>		
5-23-52	<i>Cover sheet returned from Appeal Board registrant was classified I-A</i>	3	0
5-23-52	<i>Form 110 mailed dc</i>		

*6/16/52 Cover Sheet forwarded to State Headquarters for transmittal to National Headquarters for review. eg*

*7/8/53 Letter ordering registrant to appear before board July 14, 1952. 8:00 PM*

*JUL 14 1952 I A . . . [3 initials]*

*JUL 15 1952 SSS Form No. 110 Mailed*

*10-22-52 The Appeal Board reviewed the file and determined that the registrant should not be classified in either Class I-A-O or Class I-O or any other lower classification under the circumstances set forth in subparagraphs (1) or (2) of paragraph (a) of Section 1626.25, Selective Service Regulations.*

*FEB 13 1953 Returned from appeal Board classified*

*FEB 13 1953 I-A Form 110 mailed. 4 0*

*FEB 19 1953 SSS Form No. 252 Mailed to Report March 5th, 1953*

*MAR 10 1953 Registrant reported 3/5/53: but refused to be Inducted: See letter Harold Growen 1st Lt. o/c Ind. Sta. 3/6/53*

*3-12-53 Cover Sheet & Reg. Card forwarded to St. Hedqtrs. for review ds*

\* \* \*

SSS Form No. 100-S

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### GOVERNMENT'S EXHIBIT 2 F

October 8, 1948

To Whom It May Concern:

Concerning the ministerial duties of Mr. Anthony Sicirella: He is an ordained minister of the gospel and a representative of a legal religious organization known as the Watchtower Bible and Tract Society.

Mr. Sicurella visits persons in their homes where he brings to them Bible tracts and Bibles and holds personal Bible studies with them.

Also said minister is enrolled in a ministry school at 24th and Lawndale Streets where he attends regularly to further his vocation as a minister of God.

I have personally known Mr. Sicurella and of his ministry for a period of two years.

Signed Theodore A. Savvas  
3309 W. Adams Street  
Chicago, Illinois

State of Illinois ) ss  
County of Cook )

Personally appeared before me this 8th day of October 1948.

M. Mildred Beck  
Notary Public

My Commission Expires Aug. 3, 1950

[Seal of Notary public]

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**GOVERNMENT'S EXHIBIT 2 F**

Page 2

State of Illinois ) ss  
County of Cook )

To whom it may concern:

I, Willard Dargan, being duly sworn and under oath, do hereby testify that I know Anthony Sicurella, \*1105 S. Hermitage Ave., Chicago 12, Illinois, to be a *student* minister of the Gospel and that he is associated with the Watch Tower Bible and Tract Society.

He is highly industrious in his study of the Bible and attends all formations of the Company whereby he may improve his ministry and add to his knowledge of the Scriptures. These formations include Ministry school, Service meetings, and Watchtower studies.

I have known Anthony Sieurella for the past year and a half I find him to be very sincere in his capacity as a *student minister*.

Name Willard Dargan  
Address 3206 W. Maypole Ave.  
Chicago 24, Illinois

\* \* \*

[Sworn before notary public]

\*Moved to 2642 N. McVickers.

A. T. S.

—

\* \* \*

#### **GOVERNMENT'S EXHIBIT 2 H**

11-14-27-188

Anthony Tony Sieurella  
2642 North McVickers

Chicago 39, Illinois

October 15, 1950

Area 1 Pls note [Penciled note]

Selective Service System

Local Board No. 14

226 West Jackson Blvd.

Chicago 6, Illinois

Gentlemen:

Since I have the right to appeal the change of my Ministers classification of 4-D to 1-A; I hereby request a personal appearance before the board, to further discuss my

proper classification of which is a Minister's classification 4-D.

It is now over a year that I have been in my proper classification 4-D of which is a Ministers proper classification. But through some misunderstanding you now classify me 1-A. For this reason I am now appealing my case. Thus: my request for a personal appearance before the board, to discuss my proper classification of which is 4-D a Minister's classification.

Waiting for your reply as to when to make my personal appearance before the board, I am:

Respectfully Yours

[Signature]

Anthony Tony Sicurella  
Ordained Minister

OCT 16 1950  
[Local Board Stamp]

---

**GOVERNMENT'S EXHIBIT 2 I**

- Luke 16:13 Cannot serve God and man
  - John 18:36 My Kingdom is not of this world
  - Acts 5:29 One should obey God rather than man
  - Exo. 23:32 Make no covenant with their gods
  - Mat. 7:1-2 Who are you to judge
  - Mark 16:15 Preach in all the world
  - Mat. 24:14 This gospel shall be preached
  - Luke 6:31 Do unto others
-

**GOVERNMENT'S EXHIBIT 2 J**

**Anthony T. Sicurella  
2642 North McVickers  
Chicago 39, Illinois  
Nov. 5, 1950**

**NOV 8 1950**  
[Local Board Stamp]

**Selective Service System  
Local Board No. 14  
226 West Jackson Blvd.  
Chicago 6, Illinois**

**Gentlemen:**

We the undersigned have known and do recognize Brother Anthony T. Sicurella as a minister of the gospel as of personally preaching and teaching the vital Kingdom Message publicly and from door to door for a good number of years.

<b>Harvey L. Cottom</b>	<b>2355 S. Lawndale Ave. Chgo 23, Ill</b>
<b>William J. Narve</b>	<b>4247 W. 21st Place, Chgo 23, Ill.</b>
<b>Clyde Anderson</b>	<b>Woodale Ill Box 706</b>
<b>Frank Sypien</b>	<b>16427 Lawndale Harvey Ill.</b>
<b>Alonzo E. Torbit</b>	<b>3216 S. 61st Ave. Cicero 50, Ill.</b>
<b>Frank McCluskey</b>	<b>1521 S. Millard St.</b>
<b>Harold McGuire</b>	<b>5355 Leland W. Chicago</b>
<b>Robert O. Stich</b>	<b>6033 Richmond, Clarendon Hills</b>
<b>Elmer H. Nordgren</b>	<b>6128 N. Nagle Ave. Chicago</b>

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**GOVERNMENT'S EXHIBIT 2 K**

Geo. H. Lenz,  
5008 Diversey Blvd.  
Chicago, Ill.

NOV 8 1950

[Local Board Stamp]

Illinois Draft Board #  
Chicago, Ill.

Dear Sirs:

It is my privilege to write to you in regard to the ministerial record of Anthony Sicurella, 2642 No. McVickers, Chicago, Illinois.

Mr. Sicurella was immersed and became a consecrated servant of Jehovah in 1942. He has been a regular student at our ministry school for the past four years.

Mr. Sicurella engages in the door to door ministry bringing the message of the Kingdom to the people, as well as taking part in other phases of the work such as public advertising and he has progressed in his work to the point of instructing others through the medium of hour-long bible discourses at the company assemblies.

Sincerely,  
[Signature]  
Geo. H. Lenz,

Company Servant of the Northwest Unit  
Of Jehovah's Witnesses and  
City Servant of All Chicago Companies

Subscribed and sworn to before me this 7th day of November, 1950. Carl F. Froberg, Notary Public

1838 N. Fairfield Ave.  
Chicago 47, Ill.

[Seal of Notary Public]

**GOVERNMENT'S EXHIBIT 2 L**

Anthony Tony Sieurella  
2642 North McVickers  
Chicago 39, Illinois  
November 11, 1950

Selective Service System  
Local Board No. 14  
226 West Jackson Blvd.  
Chicago 6, Illinois

11-14-27-188

Gentlemen

I am *appealling* my change of classification from 4-D to 1-A. And in doing so I wish to make a personal appearance before the whole Board of Appeals, to further give material as well as verbal proof of my Ministerial status as of since 1932.

I also refer you to your very own laws pertaining: Section 5- (d) Selective Training Service Act where General Hershey director of Selective Service very clearly points out a basis for you to place your *judgement* on or toward my proper classification of which is a Ministerial draft status 4-D. As I have had from the start.

Selective Training Service Act - Section 5 (d) : "Regular or duly ordained ministers of religion shall be exempt from training and service".

*Hoping* to make a personal appearance before you, very soon I remain:

Respectfully yours,  
[Signature]  
Anthony T. Sieurella  
Duly Ordained Minister

P. S. for proof of all the above statements: refer to my file.

NOV 15 1950  
[Local Board Stamp]

**GOVERNMENT'S EXHIBIT 2 M**

LOCAL BOARD NO. 14  
Selective Service System  
NOV 21 1950  
226 West Jackson Blvd.  
Chicago 6, Illinois  
November 21, 1950

Mr. Anthony T. Sicurella  
2642 North McVickers Avenue  
Chicago 39, Illinois

Dear Mr. Sicurella:

In accordance with your request, an appeal to the Appeal Board will be granted providing you are found acceptable for military service after the pre-induction physical examination.

No personal appearance is granted before the Appeal Board, but your complete file will be forwarded for a decision.

Yours very truly  
By Direction of the Board  
H. J. Bittle, Clerk

HJB:LHG

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**GOVERNMENT'S EXHIBIT 2 N**

SELECTIVE SERVICE SYSTEM  
ORDER TO REPORT FOR ARMED FORCES PHYSICAL EXAMINATION

NOV 21 1950  
(Local Board Stamp)  
November 21, 1950 (Date of mailing)  
To (First name) *Anthony* (Middle name) *Tony* (Last name) *Sicurella* (Selective Service Number) *11 14 27 188*

You are hereby directed to report for armed forces physical examination at (Place of reporting) *Room 316 - 209 West Jackson Boulevard, Chicago, Illinois* at (Hour of reporting) *1:00 P.m.*, on the (Day) *27th* of (Month) *November, 1950*

*H. J. Bittle*  
(Member or clerk of Local Board)

\* \* \*

SSS Form No. 223

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**GOVERNMENT'S EXHIBIT 2 O**

**CERTIFICATE OF ACCEPTABILITY**

Last Name - First Name - Middle Name      Present Home  
Address  
*Sicurella      Anthony      Tony      2642 N. McVickers Ave.  
Chicago Ill*

Selective Service Number *11 14 27 188*

Local Board Address *226 West Jackson Blvd. Chicago Ill*

I certify that the qualifications of the above named registrant have been considered in accordance with the current regulations governing acceptance of Selective Service registrants and he was this date:

X Found acceptable for induction into the armed services

\* \* \*

Date      Place      Typed or stamped name and grade  
of joint examining and induction  
station commander

*27 Nov 50 Chicago Ill Robert Baum Maj 5102 ASU*

Signature

*Robert Baum*

---

\* \* \*

**GOVERNMENT'S EXHIBIT 2 Q**

DEC 12 1950  
[Local Board Stamp]

Anthony T. Sieurella  
2642 North McVickers  
Chicago 39, Illinois  
December 10, 1950

Selective Service System  
Local Board No. 14  
226 West Jackson Blvd.  
Chicago 6, Illinois

11-14-27-188

Gentlemen:

On December 9, 1950 I received your notification of/or "certificate of acceptability" (DD form No. 62, 1 Oct. '49) stating that I was found acceptable for induction into the armed services. But as I remember my records for the "physical" were marked incomplete, and for finding me "acceptable" when my records are marked incomplete, sounds far more *sensless*, than "common sense".

Also: Again: I refer you to my complete file in your records. That therein you will learn that as a Minister I have been and am still in Jehovah God's Army. Which makes me ineligible to serve in any other army. Because as Christ Jesus says: (John 18:36) "My Kingdom is not of this world: if my kingdom were of this world, then would my servants fight . . . And at Acts 5:29, "We ought to obey God rather than men" . . . In the Selective Training and Service Act of 1940 and as amended, by General Lewis B. Hershey, "the director of the Selective Service System, certifies that: in Section 5 (d): "Regular or duly ordained ministers of religion . . . shall be exempt from training and service (but not from registration). And under this act I am being classified improperly. Therefore I am asking once again for a personal appearance before you, Local Board

No. 14, to prove to you by your own laws that my proper classification should be that of a Minister IV-D.

Respectfully yours

[Signature]

Minister: Anthony T. Sicurella

---

### GOVERNMENT'S EXHIBIT 2 R

#### SELECTIVE SERVICE SYSTEM INDIVIDUAL APPEAL RECORD

*DEC 8 1950*

(Local Board Date Stamp)

Name of registrant (Last) *Sicurella* (First) *Anthony* (Middle) *Tony* Selective Service Number *11 14 27 188*

Classified by local board in Class *1-A* until . . .

Date classified *November 8, 1950*

Forwarded on appeal taken by *Registrant*

Date forwarded to Appeal Board *December 8, 1950*

*H. J. Bittle*

Member or Clerk of Local Board

Minutes of Action by Appeal Board

Appeal Board *Panel A* for the State of *Illinois* . . .

*523 Plymouth Ct. Chicago 5, Ill.* . . .

Classified in Class *1A* until . . . by the following vote:

Yes *4* No *0* (Date of classification by Appeal Board)

*JAN 17 1951*

*Nate T. Felt*

Member or Clerk of Appeal Board

\* \* \*

**GOVERNMENT'S EXHIBIT 2 S**

DEC 12 1950  
[Local Board Stamp]

December 12, 1950

Mr. Anthony T. Sicurella  
2642 North McVickers Avenue  
Chicago, Illinois

Dear Sir:

Receipt is acknowledged of your letter of December 10, 1950, wherein you request a personal appearance before this Local Board.

In accordance with your request, your complete file has been forwarded to the Board of Appeal for review and consideration.

You will be notified of the decision of the Appeal Board.

Very truly yours,  
For the local board:  
H. J. Bittle  
Clerk

ds  
#11-14-27-188

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**GOVERNMENT'S EXHIBIT 2 T**

Anthony T. Sicurella  
2642 N. McVickers Av  
Chicago 39, Illinois  
January 25, 1951

[Penciled note]  
Local Board No. 14  
Group Office No. 1  
226 W. Jackson Blvd  
Chicago 6, Illinois

11-14-27-188

JAN 26 1951  
[Local Board Stamp]

Gentlemen:

Upon receiving my latest classification of 1-A dated January 22, 1951 forces me once again to request a personal appearance to appeal this very much improper classification, before you. So once again I request a personal appearance - to appeal before you.

I do not understand just why you do not follow the orders from your superiors in Washington D. C. namely General Lewis B. Hershey, Director of Selective Service where points out in "Black and White" that he himself recognizes all the Jehovah's Witnesses and the Watchtower Bible and Tract Society as a religious organization. And he said among other things:

Facts: Jehovah's Witnesses claim exemption from training and service and classification in Class IV-D as duly ordained ministers of religion under Section 5(d), Selective Training and Service Act of 1940 . . .

Section 5(d): "Regular or duly ordained ministers of religion shall be exempt from training and service (but not from registration) under this act.

Also on April 3, 1943, General Hershey made his Second *Reprt* of the Director of Selective Service to the President, which was published in a book entitled 'Selective Service in Wartime (Government Printing Office, Washington, 1943).' In that report to President Roosevelt, he said in part, with respect to the definition given by National Headquarters to the vocation of ministers of religion.

The principle was extended to persons who were not in any strict sense ministers or priests in any sacerdotal sense. Of which included, (quote) the Jehovah's Witnesses, who sell their religious books, and thus extend the Word. Page 241.

In discharging one of Jehovah's Witnesses from the custody of the Selective Service System, the United States Court of Appeals for the Seventh Circuit, in *Hull v. Stalter*, 151 F. 2d 633 (1945) said: (in part)

Relator alleged that at the time of his registration and at the time of his final classification, the proof submitted by him to the Selective Service System showed that he was exempt as a minister of religion under ss 5(d) of the Selective Training and Service Act of 1940, as amended, in that he was a duly ordained minister of Jehovah's Witnesses and the Watchtower Bible and Tract Society, constituting a recognized religious *organization* under the act. . . .

. . . We have serious doubt that there was any justification for the Board's refusal originally to classify relator in IV-D. Whatever be thought, however, of the Board's original action in this respect, there can be no question but that subsequent proof conclusively demonstrated that he was entitled to such classification.

Such being the situation, the Board abused its discretion in its refusal to so classify him. Its action was arbitrary and unauthorized. The order discharging relator is affirmed.

In the above I have proved that not only General Lewis B. Hershey, but the courts of appeal also do recognize and do classify all Jehovah's Witnesses as ordained ministers in classification IV-D.

Therefore I do assume that you have over-looked all legal details and background in determining my proper classification of which is IV-D, according to the Selective Service and Training Acts and Codes as well as the *rule-ings* from Courts of appeal. Therefore I do properly claim to be classified in classification of IV-D, according to law.

Gentlemen:

I do not claim exemption from military service merely because the laws of the land says I can. But because I am in the army of Christ Jesus, serving as a soldier of Jehovah's appointed Commander, Christ Jesus. (2 Timothy 2:3, 4) Inasmuch as the war weapons of the soldier of Christ Jesus are not carnal, I am not authorized by his *Commander* to engage in carnal warfare of this world. (2 Corinthians 10:3, 4; Ephesians 6:11-18) Furthermore, being enlisted in the army of Christ Jesus, I cannot desert the forces of Jehovah to assume the obligations of a soldier in any army of this

world without being guilty of desertion and suffering the punishment meted out to deserters by Almighty God.

Hoping to hear from you as well as to get my proper classification (so as I can continue to carry on my ... isterial duty, as was Christ Jesus) I am:

Respectfully yours

[Signature]

Anthony T. Sicurella

---

**GOVERNMENT'S EXHIBIT 2 U**

JAN 31 1951

[Local Board Stamp]

31 January 51

SSS No. 11 14 27 188

Mr. Anthony T. Sicurella  
2642 North McVickers Avenue  
Chicago, Illinois

Dear Sir:

Since the Appeal Board by a vote of 4 to 0 upheld the Classification in class 1-A by the local board, no further personal appearance or appeal can be granted.

Yours very truly,

By Direction of the Board:  
Herman J. Bittle, Clerk

---

HJB:eg

**GOVERNMENT'S EXHIBIT 2 V**

[Local Board Stamp]

FEB 5 1951

Pls note [Penciled note]

Anthony T. Sicurella  
2642 N. McVicker  
Chicago 39, Illinois  
February 1, 1951  
11-14-27-188

**Local Board No. 14**  
Selective Service System  
226 W. Jackson Blvd.  
Chicago 6, Illinois

Gentlemen:

Since you the Local Board and the Appeal Board both have abused your discretion in improperly classifying me as 1-A instead of 4-D, an ordained minister, I am herewith informing you that I am also appealing my case to the President of the United States and also the Director of the Selective Service System, General Lewis B. Hershey. I will notify you of the results.

Hoping you will reconsider this case as many other boards have justly done so.

Respectfully yours,

Anthony T. Sicurella

---

**GOVERNMENT'S EXHIBIT 2 W**

**SELECTIVE SERVICE SYSTEM  
SPECIAL FORM FOR CONSCIENTIOUS OBJECTOR**

**FEB 9 1951**

[Local Board Stamp]

Selective Service No. **11 14 27 188**

Name (Last) **Sicurella** (First) **Anthony** (Middle) **Tony**  
 Address (Number and street or R. F. D. route) **2642 N.**  
**McVickers Ave.,** (City, town, or village) **Chicago 39,** (County) **Cook** (State) **Illinois**

This form must be returned on or before (Five days after date of mailing or issue) **February 10, 1951.**

\* \* \*  
**Series I.—Claim for Exemption**  
 \* \* \*

(B) I am, by reason of my religious training and belief, conscientiously opposed to participation in war in any form and I am further conscientiously opposed to participation in noncombatant training or service in the armed forces. I, therefore, claim exemption from combatant training and service and, if my claim is sustained, I understand that I will, because of my conscientious objection to noncombatant service in the armed forces, be deferred as provided in Section 6(j) of the Selective Service Act of 1948.

*Anthony T. Sicurella*  
 (Signature of registrant)

**Series II.—Religious Training and Beliefs**

\* \* \*

1. Do you believe in a Supreme Being? Yes **X** . . .
2. Describe the nature of your belief which is the basis of your claim made in Series I above, and state whether or not your belief in a supreme being involves duties which to you are superior to those arising from any human relation.

*The nature of my claim is that: I am already in the Army of Christ Jesus serving as a soldier of Jehovah's appointed Commander Jesus Christ. (2 Tim. 2: 3 & 4). Inasmuch as the war weapons of the soldier of Jesus Christ are not carnal, I am not authorized by his (continued on supplement)*

SSS Form No. 150

[Page 2]

3. Explain how, when, and from whom or from what source you received the training and acquired the belief which is the basis of your claim made in Series I above.

*Through regular Bible Study in the most efficient ministry school in the world, which is conducted in a manner similar to the tutorial and discussion groups used in the most modern universities. It is a regular course in Bible Study, comparative theology, public speaking, Bible History, and etc; with set courses. And I as a minister continue to study regularly after my ordination as well as before.*

4. Give the name and present address of the individual upon whom you rely most for religious guidance.

*Watchtower Bible and Tract Society, Brooklyn, New York; Plus the Word of Almighty God itself the Bible.*

5. Under what circumstances, if any, do you believe in the use of force?

*Only in the interests of defending Kingdom Interests, our preaching work, our meetings, our fellow brethren and sisters and our property against attack. I (as well as all Jehovah's Witnesses) defend those when they are attacked and are forced to protect such interests and scripturally so. Because in doing so we do not arm ourselves or carry carnal weapons in anticipation of or in preparation for trouble or to meet threats. (continued on supplement)*

6. Describe the actions and behavior in your life which in your opinion most conspicuously demonstrate the consistency and depth of your religious convictions.

*Ever since I was six years old, I have been regularly preaching and teaching the Gospel of the Kingdom just as it is stated at Matthew 24: 14 "And this gospel of the King-*

*dom shall be preached in the whole earth for a testimony and then shall the end come." I have been doing this work just as Jesus did, and I am still doing this "Publicly and from house to house, and from the pulpits and platforms." I also visit those who cannot attend rich or poor, weak or strong, sick or well and regardless of race.*

7. Have you ever given public expression, written or oral, to the views herein expressed as the basis for your claim made in Series I above? If so, specify when and where.

*On January 1940, I made a public consecration, by water immersion to our Creator Jehovah God through Jesus Christ. Thus wholly dedicating my vows to him through Christ. And in being wholly dedicated to Jehovah God through Christ, I have become no part of this world which is governed by political systems. For this important Bible reason I am telling you that I conscientiously object to serving in any military establishment or any civilian arrangement that substitutes for military service, (continued on supplement)*

### Series III.—General Background

\* \* \*

1. Give the name and address of each school and college which you have attended, together with the dates of your attendance; . . .

Name of School	Type of School	Location of School	Dates Attended From—To
<i>Jefferson</i>	<i>Public</i>	<i>Fillmore and Ashland</i>	<i>1933 1941</i>
			<i>Sts</i>
<i>Cregier (Junior)</i>	<i>Public</i>	<i>Fillmore and Wood</i>	<i>1941 1943</i>
			<i>Sts</i>
<i>McKinnley (Senior)</i>	<i>Public</i>	<i>2040 West Adams Street</i>	<i>1943 1945</i>
<i>Kingdom Hall</i>	<i>Religious</i>	<i>5008 West Diversey</i>	<i>1949 Still</i>
<i>Kingdom Hall</i>	<i>Religious</i>	<i>2437 South Lawndale</i>	<i>1940 1949</i>

2. Give a chronological list of all occupations, positions,

jobs, or types of work, other than as a student in school or college, in which you have at any time been engaged, whether for monetary compensation or not, giving the facts indicated below with regard to each position or job held, or type of work in which engaged.

Type of Work	Name of Employer	Address of Employer	Period Worked From- To-
<i>Clerk Typist Railway Express</i>	<i>816 South Wells</i>	<i>Still</i>	<i>1944</i>
<i>and Assistant</i>	<i>Agency</i>	<i>Street</i>	
<i>Secretary</i>			

[Page 3]

3. Give all addresses and dates of residence where you have formerly lived.

Name of City, Town, or Village	State or Foreign Country	Street Address or R. F. D. Route	Dates of Residence From- To-
<i>Chicago 39</i>	<i>Illinois</i>	<i>1105 So. Hermitage, Ave.</i>	<i>1930 1949</i>
<i>Chicago 39</i>	<i>Illinois</i>	<i>2642 No. McVickers</i>	<i>1949 Still</i>

4. Give the name and address of your parents and indicate whether they are living or not.

*Antonio Sicurella and Mary Sicurella 2642 North McVickers, Chicago 39, Illinois Both Living.*

5. (a) State the religious denomination or sect of your father *Jehovah's Witnesses*

(b) State the religious denomination or sect of your mother *Jehovah's Witnesses*

#### Series IV.—Participation in Organizations

\* \* \*

1. Have you ever been a member of any military organization or establishment? If so, state the name and address of same and give reasons why you became a member.

*No (None-never)*

2. Are you a member of a religious sect or organization? (Yes or no) Yes If your answer to question 2 is "yes,"

answer questions (a) through (e).

(a) State the name of the sect, and the name and location of its governing body or head if known to you.

*Jehovah's Witnesses - Watchtower Bible and Tract Society, Brooklyn, New York*

(b) When, where, and how did you become a member of said sect or organization?

*I was brought up in it, through my parents.*

(c) State the name and location of the church, congregation, or meeting where you customarily attend.

*Kingdom Hall 5008 West Diversey, Chicago 39, Illinois*

(d) Give the name, title and present address of the pastor or leader of such church, congregation, or meeting.

*Company Servant - George Lenz 5008 West Diversey, Chicago 39, Illinois*

(e) Describe carefully the creed or official statements of said religious sect or organization in relation to participation in war.

*Inasmuch as the war weapons of the soldier of Christ Jesus are not carnal, I am not authorized by his commander to engage in carnal warfare of this world. (2 Corinthians 10: 3, 4; Ephesians 6: 11-18) Also by the words of Jesus at . . . John 18: 36 - "My Kingdom is not of this world. If my Kingdom were part of this world then would my servants fight."*

3. Describe your relationships with and activities in all organizations with which you are or have been affiliated, other than military, political, or labor organizations.

*I am an ordained minister of the gospel, engaged in Christian educational work, associated with the Watchtower Bible and Tract Society, of New York. This work is done from the pulpits, platforms, publicly and from door to door. Also visiting those who cannot attend. Rich or poor, weak or strong, sick or well regardless of race.*

[Page 4]

#### Series V.—References

Give here the names and other information indicated

concerning persons who could supply information as to the sincerity of your professed convictions against participation in war.

Name	Full Address	Occupation or Position	Relationship To You
<i>George H. Lenz</i>	<i>3722 North Sayre</i>	<i>Company Servant</i>	<i>Brethren Minister</i>
<i>Harold S. McGuire</i>	<i>5355 West Leland</i>	<i>School Servant</i>	<i>Brethren Minister</i>
<i>Elmer H. Nordgren</i>	<i>6128 North Nagle</i>	<i>Sunday Study Conductor</i>	<i>Brethren Minister</i>
<i>Robert Walker R. R. #1, Palatine, Illinois</i>	<i>Ordained</i>	<i>Brethren Minister</i>	<i>Minister</i>

#### Registrant's Certificate

\* \* \*

I, *Anthony T. Sicurella*, certify that I am the registrant named and described in the foregoing statements in this questionnaire; that I have read (or have had read to me) the statements made by and about me, and that each and every such statement is true and complete to the best of my knowledge, information, and belief. The statements made by me in the foregoing (are, are not) *are* in my own handwriting.

*Anthony T. Sicurella*

(Signature or mark of registrant)

\* \* \*

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#### GOVERNMENT'S EXHIBIT 2 X

February 8, 1951

Supplement to: Special Form for Conscientious Objector  
Series II

Question #2: Commander to engage in carnal warfare of this world. (2 Corinthians 10:3 & 4, Ephesians 6:11-18)  
Furthermore being enlisted in the army of Jesus Christ, I

cannot desert the forces of Jehovah to assume the obligations of a soldier in any army of this world without being guilty of desertion and suffering the punishment meted out to deserters by Almighty God. Also I follow the *admonition* given to us at Matthew 22:21, which states: "Render unto Ceaser the things that are Ceaser's and God's things unto God."

Question #5: In doing so I try to ward off blows and attacks only in defense. I do not use weapons of warfare in defense of myself or the Kingdom interests. I do not retreat when attacked in my home or at meeting places, but will retreat on public or other property and shake the dust off my feet; so not giving what is holy to dogs and not throwing my pearls before swines. (Matthew 10:14 & 7:6) So I retreat when I can do so and avoid a fight or trouble. Also following the admonition at Acts 24:16; which states "In this respect, indeed, I am exercising myself continually to have a consciousness of committing no offense against God and man."

Question #7: Just as Jesus told *Ceaser's* representative Pilate: "My Kingdom is not of this world. If my Kingdom were part of this world then would my servants fight." (John 18:36)

Gentlemen:

I hope I have made myself clear to you in regards to my stand toward the affairs of this world, through my answer to question number 7, series II; which states: . . . On January 1940, I made a public consecration by water immersion (in the same manner Jesus did) to our Creator Jehovah God through Christ. Thus wholly dedicating my vows to Him through Christ. And in being wholly dedicated to Jehovah God through Christ, I have become no part of this world which is governed by political system. Just as Jesus said at John 18:36: "My Kingdom is not of this world." For this important Bible reason I am letting you know that I conscientiously object to serving in any mili-

tary establishment or any civilian arrangement that substitutes for military service.

After supplying you additional proof and information through form or rather SSS form no. 150, toward the *sincerety* of my ministerial status, I trust you will grant me back my original and proper classification of IV-D. Hoping you will I remain:

Respectfully yours  
[Signature]  
Anthony T. Sicurella  
2642 North McVickers  
Chicago 39, Illinois  
Selective Service No. 11-14-27-188

FEB 9 1951  
[Local Board Stamp]

\* \* \*

**GOVERNMENT'S EXHIBIT 2 Z**

Re: Anthony T. Sicurella  
11-14-27-188

ILLINOIS STATE HEADQUARTERS  
SELECTIVE SERVICE SYSTEM  
523 Plymouth Court  
Chicago 5, Illinois

In reply  
Please Refer to File:  
PGA:VN:hjr

[Local Board Stamp]

FEB 23 1951  
21 February 1951

Local Board No. 14  
Selective Service System  
226 W. Jackson Blvd.  
Chicago 6, Illinois

Gentlemen:

Thank you for forwarding the cover sheet of the captioned registrant to this office for review.

We are returning herewith the cover sheet with the request that this registrant be considered for a classification of 4-D inasmuch as there is evidence in the cover sheet that the registrant is a minister of religion. There is also in the cover sheet a Form 150, Special Form for Conscientious Objector.

In the event the local board, after reconsideration of case, retains the registrant in class 1-A, it should be forwarded to the Appeal Board for action in accordance with the regulations.

Please advise this office the result of the reconsideration.

Sincerely yours,  
[Signature]  
Paul G. Armstrong  
State Director

Encl.

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**GOVERNMENT'S EXHIBIT 2 AA**

MAR 10 1952  
[Local Board Stamp]  
March 10, 1952

Charles J. Magnesen, Lt. Col.,  
Selective Service System  
523 Plymouth Court  
Chicago 5, Illinois

Re: Anthony Tony Sicurella  
SS No. 11 14 27 188

Dear Sir:

We are forwarding herewith, the cover sheet of the above named registrant presently classified 4-D, for your review and recommendation.

Very truly yours,  
For the Local Board:  
G. J. Bittle  
Clerk

HJB: eg  
encl. Cover Sheet

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**GOVERNMENT'S EXHIBIT 2 AB**

Re: Sieurella, Anthony Tony  
SS 11-14-27-188

ILLINOIS STATE HEADQUARTERS  
SELECTIVE SERVICE SYSTEM  
523 Plymouth Court  
Chicago 5, Illinois

In Reply  
Please Refer to File  
PGA: CJM : HKB : mm

13 March 1952

Local Board No. 14  
Selective Service System  
226 W. Jackson Blvd.  
Chicago 6, Illinois

Gentlemen:

Transmitted herewith is the cover sheet and file of the above named subject which your local board sent to this Headquarters along with your letter of 10 March.

It is the opinion of this Headquarters that the above named registrant does not qualify for a IV-D, or minister of religion, classification as he does not meet all of the conditions set forth in Section 1622, 43 (3) SSR.

The local board is requested to reopen this file in accordance with Local Board Memorandum No. 176, dated

11 March 1951, and allow the registrant all of his rights of appeal.

Very truly yours,  
[Signature]  
Paul G. Armstrong  
State Director

Encl.

Cover sheet

[Local Board Stamp]  
MAR 14 1952

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**GOVERNMENT'S EXHIBIT 2 AC**

Anthony T. Sieurella  
2642 North McVickers  
Chicago 39, Illinois  
March 20, 1952

MAR 24 1952

[Local Board Stamp]  
Selective Service System  
Local Board No. 14  
226 West Jackson Blvd.  
Chicago 6, Illinois

11-14-27-188

Gentlemen:

I am *appealing* my change of classification from IV-D to I-A. And in doing so I wish to make a personal appearance before the whole Board Members, to once again give material as well as verbal proof of my ministerial status as of since 1932.

I also refer you to your very own laws pertaining: Section 5 - (d) Selective Service Act where General Lewis B. Hershey Director of Selective Service very clearly points out a basis for you to place judgment on or toward my proper classification of which is a Ministerial Status IV-D, just as I have been twice before - March 8, 1949 and March

13, 1951. (And having been IV-F previous to these classifications)

Selective Training Service Act - Section 5 (d)  
"Regular or duly ordained ministers of religion  
shall be exempt from training and service."

Awaiting to hear the date of such personal appearance  
before you, I remain

Respectfully yours  
Anthony T. Sieurella  
Duly Ordained Minister  
SSN 11-14-27-188

P. S.

For proof of all the above statements: please refer to  
my file.

---

**GOVERNMENT'S EXHIBIT 2 AD**

APR 1 1952

[Local Board Stamp]  
Mr. Anthony T. Sieurella  
2642 N. McVickers Ave.  
Chicago 39, Illinois

Dear Sir:

In accordance with your request for a personal appearance, you are hereby requested to appear before this local board on Monday, April 7, 1952, at 7 p.m. in Room 208, 226 W. Jackson Blvd., Chicago, Ill.

Please bring this letter with you.

Yours very truly,  
By Direction of the Board  
H. J. Bittle, Clerk

HJB:lr

No. SS 1-14-27-188

---

**GOVERNMENT'S EXHIBIT 2 AE**

11-14-27-188

Anthony T. Sicurella  
2642 North McVickers  
Chicago 39, Illinois  
April 14, 1952

APR 18 1952

[Local Board Stamp]

Selective Service System

State Headquarters

State Director Col. R. G. Armstrong

523 South Plymouth Court

Chicago 5, Illinois

Dear Sir:

On April 8th, 1952 - my classification of IV-D was changed to I-A for what reason I do not know. Thus I am writing to you in appeal that you can and will grant me back my proper classification of IV-D as I have been previously classified, because I have been and still am engaged in my Ministerial duties; teaching and preaching the Gospel of the Kingdom, publicly and from house to house as well as from the pulpit, as admonished at Matthew 24: 14 "That this Gospel of the Kingdom shall be preached unto all the earth.

I also wish to quote Selective Service Acts of 1948: Sec. 6(g) - which reads: "Regular or duly ordained ministers of religion and students preparing for the ministry under the direction of recognized churches or religious organizations shall be exempt from training and service under this title." (in part) This I have been and still am engaged in, since 1933.

Also Sec. 6 (j) (in part) "Nothing contained in this title shall be construed to require any person to be subject to combatant service and training, who by reason of religious belief, is *conscientiously* opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being

involving duties Superior to those *ariving* from any human relations. (Acts 5:29 "We must obey God, rather than men.") If one is found to be *concientiously* opposed to participation in such noncombatant service, he shall be deferred. Also: If the objector is found to be *concientiously apposed* to participation in such noncombatant service, he shall be deferred."

I also wish to state that I do not claim exemption from military service merely because the laws of the land says I can, but because I am already in an army which is that of Christ Jesus, serving as a soldier of Jehovah God's appointed commander Jesus Christ. (2 Tim. 2-3 & 4)

Hoping that you will grant me back my original and proper classification of IV-D, according to law so I can continue to carry on my ministerial duties, I remain:

Respectfully yours  
[Signature]  
Anthony T. Sieurella  
SSN 11-14-27-188

My board is  
#14.

---

### GOVERNMENT'S EXHIBIT 2 AF

#### SELECTIVE SERVICE SYSTEM INDIVIDUAL APPEAL RECORD

APR 18 1952

(Local Board Stamp)

Name of registrant (Last) *Sicurelia* (First) *Anthony* (Middle) *T.* Selective Service Number *11 14 27 188*

Classified by local board in Class *1-A . . .*

Date classified *April 7, 1952*

X Forwarded on appeal taken by *registrant*  
Date forwarded to Appeal Board *April 18, 1952*

*H. J. Bittle*  
Clerk of Local Board

**Minutes of Action by Appeal Board**

Appeal Board Northern District *Panel N - 1* for the State of . . . *Illinois* . . .

*APR 21 1952*

[Appeal Board Stamp]

Classified in Class *I A* until . . . by the following vote:  
Yes 3 No 0 (Date of classification by Appeal Board) *May 21 1952*

*Nate T. Felt*

Member or Clerk of Appeal Board

\* \* \*

SSS Form No. 120

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**GOVERNMENT'S EXHIBIT 2 AG**

Anthony T. Sicurella  
2642 No McVickers Av  
Chicago 39, Illinois  
May 31, 1952

*JUN 4 1952*

[Local Board Stamp]

Selective Service System  
State Director  
Col. R. R. Armstrong  
523 South Plymouth Court  
Chicago 5, Illinois

Dear Sir:

In reference to my re-classification of I-A from IV-D, dated May 23, 1952 - I wish to make reference to my conscientious objector form on file which has been overlooked.

If you do not recognize me to be a minister and in class

IV-D, I wish you would give full consideration to my conscientious objector form in which I clearly state that my conscientious objections are based on my ministerial status and religious beliefs and that such should according to Selective Service Acts of 1948 entitle me to a classification as one opposed to both combatant and noncombatant service.

Therefore once again I am writing to you in appeal to further view my file and give due and full consideration to my conscientious objector form in my file and to be classified as one opposed to both combatant and non-combatant service, and in class IV-E.

Sec. 6(j) (in part) "Nothing contained in this title shall be construed to require any person to be subject to combatant service and training, who by reason of religious belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in relation to a Supreme Being involving duties Superior to those *arriving* from any human relations. (Acts 5:29 - "We must obey God rather than men.") If one is found to be conscientiously opposed to participation in such non-combatant service he shall be *deferred*. Also: If the objector is found to be conscientiously opposed to be or take part in such non-combatant service he shall be *deferred*."

Hoping you will grant me the above, I remain;

Respectfully yours

[Signature]

Anthony T. Sicurella

11-14-27-188

**GOVERNMENT'S EXHIBIT 2 AH**

Anthony T. Sicurella  
2642 No. McVickers Av  
Chicago 39, Illinois  
June 9, 1952

Pls note [penciled note]

JUN 11 1952

**Local Board #14**  
Selective Service System  
226 West Jackson Blvd.  
Chicago 6, Illinois

Gentlemen:

In *recieving* a reply from the State Headquarters of Selective Service from Col. Armstrong concerning my classification; he states that it is up to the local board to classify the registrants.

Therefore once again, if you do not recognize me to be a Minister and in class IV-D, you should according to law consider my conscientious objector's form in my file of which should entitle me to classification as one opposed to both Combatant and Non-Combatant service and in class IV-E.

Hoping that you will as God fearing Christians unprejudicially and seriously grant me the above since it is my ministerial status and religious belief, I remain:

Respectfully yours,

[Signature]  
Anthony T. Sicurella  
11-14-27-188

**GOVERNMENT'S EXHIBIT 2 AI**

Re: Sicurella, Anthony T.  
11-14-27-188

ILLINOIS STATE HEADQUARTERS  
SELECTIVE SERVICE SYSTEM  
523 Plymouth Court  
Chicago 5, Illinois

[Local Board Stamp]  
JUN 16 1952

**STATE DIRECTOR'S ACTION**

To: Local Board No. 14

In the case of: Anthony T. Sieurella

Selective Service No. 11-14-27-188 of your local board.

Pursuant to authority granted me under Part 1606.33, Selective Service Regulations, the following State Director's Action is taken with reference to the above-named registrant:

Please forward cover sheet to this office for transmittal to National Headquarters for review.

The above action is necessary in the administration of Selective Service and is not to be considered as a criticism of the local board.

The local board will act promptly and result of completed action by the board will be reported as soon as possible on the enclosed duplicate. (If more than one action, report all at same time.) No registrant shall be inducted while his file is away from the board office.

Paul G. Armstrong, State Director  
By: [Signature]

Date: 13 June 1952

PGA: VN: hjr

Report of Board Action (Fill out and return duplicate to officer named above.) The following action was taken in connection with the above request: Cover Sheet forwarded

to State Headquarters for transmittal to National Headquarters for review.

Local Board No. 14  
(sign) By: H. J. Bittle  
Title: Clerk

JUN 16 1952  
[Local Board Stamp]  
PM-821

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**GOVERNMENT'S EXHIBIT 2 AJ**

Re: Sieurella, Anthony Tony  
SS 11-14-27-188

ILLINOIS STATE HEADQUARTERS  
SELECTIVE SERVICE SYSTEM  
523 Plymouth Court  
Chicago 5, Illinois

In Reply  
Please Refer to File:  
PGA: CJM: HKB: mm

2 July 1952

Local Board No. 14  
Selective Service System  
226 W. Jackson Blvd.  
Chicago, Illinois

JUL 3 1952  
[Local Board Stamp]

Gentlemen:

The cover sheet of the named registrant is returned herewith and, in accordance with the provisions of Section 1625.3 of the Selective Service Regulations, it is requested that the local board reopen and consider anew the classification of this registrant.

Although the record discloses that the registrant has on several occasions been granted a personal appearance, there is no indication of the nature of the evidence he submitted on such occasions, nor is there a certificate from the local board that the written evidence contained in this rec-

ord represents a full and complete summary of all of the evidence presented, including that presented by the registrant on the occasion of his personal appearances. It further appears that no reference to the Department of Justice was made by the appeal board in spite of the fact that the registrant has claimed conscientious objection, which has not been sustained by the local board or the appeal board.

The local board is requested to give the registrant another opportunity for a personal appearance. Following such personal appearance, the local board shall summarize in writing, in accordance with the provisions of Section 1624.2 (b) of the Selective Service Regulations any new and material evidence that may be presented by the registrant and include such summary in the cover sheet for the benefit of the appeal board in the event an appeal is taken. Following its action in considering anew the registrant's classification, after an opportunity for personal appearance has been accorded him the local board should preserve all rights of appeal for all interested parties.

Very truly yours,  
[Signature]  
Paul G. Armstrong  
State Director

Encl.

Cover sheet

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**GOVERNMENT'S EXHIBIT 2 AK**

JUL 8 1952

[Local Board Stamp]

July 8, 1952

Anthony T. Sicurella,  
2642 N. McVickers Ave.,  
Chicago 39, Ill.

SS No. 11-14-27-188

Dear Sir:

You are hereby requested to appear before the local

board on Monday, July 14, 1952, at 8:00 P. M., room 208, 226 West Jackson Blvd., Chicago, Ill. Bring this letter with you.

Yours very truly,  
By Direction of the Board  
H. J. Bittle, clerk

HJB-EH

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### **GOVERNMENT'S EXHIBIT 2 AL**

#### **MEMORANDUM OF INFORMATION RECEIVED AT BOARD MEETING**

To be filed in Cover Sheet of: (Registrant's Name) Anthony Tony Sieurella (SS Number) 11 14 27 188

Following is summary of information received at local board meeting held (Date) 7/14/52

Are you a duly ordained minister? Yes

When were you ordained? Feb - 1943

By whom? Congregational Church Western & Jackson Blvd (Congregation Church)

Do you regularly hold services in a public place of worship? twice a month

Where are these services held? 5008 West Diversey Ave.

What is the basis of your claim for IV-D Classification?  
Jehovah Witness

The above information was received from: Anthony Tony Sieurella, Registrant (Name of registrant, dependent, board member, clerk or other person who provided the above information)

Signed: [Signature] Member

(Signature of board member or clerk who prepared this  
Memorandum)  
PM-1104

---

**GOVERNMENT'S EXHIBIT 2 AM**

Anthony T. Sieurella  
 2642 North McVickers  
 Chicago 39, Illinois  
 July 21, 1952

JUL 22 1952  
 [Local Board Stamp]

[Penciled note] Pls note

Selective Service System  
 Local Board No. 14  
 226 West Jackson Blvd  
 Chicago 6, Illinois

11-14-27-188

Gentlemen:

I am *appealing* my change of classification from IV-D to I-A. In doing so I wish to make a personal appearance before the whole board members, to once again give material as *wells* as verbal proof of my ministerial status as of since 1932.

I also refer you to your very own laws pertaining: Section 5-(d) Selective Service Act where General Lewis B. Hershey Director of the Selective Service very clearly points out a basis for you to place *judgement* on or toward my proper classification of which is a ministerial status in class IV-D, just as I have been twice before, March 8, 1949 and March 13, 1951.

Selective Training Service Act - Section 5 (d)  
 "Regular or duly ordained ministers of religion  
 shall be exempt from training and service."

Awaiting to hear the date of such personal appearance before you, I remain:

Respectfully yours

[Signature]

Anthony Tony Sieurella  
 Duly Ordained Minister  
 SSN 11-14-27-188

P. S.

For proof of all the above statements : please refer to my file.

---

**GOVERNMENT'S EXHIBIT 2 AN**

JUL 23 1952  
[Local Board Stamp]

Anthony T. Sicurella  
2642 N. McVickers  
Chicago 39, Illinois

July 23, 1952  
SS No. 11 14 27 188

Dear Sir:

On July 14, 1952, you appeared before three members of this board, therefore, your request to appear again before the whole board is denied. According to Selective Service Regulations, one member alone is sufficient to conduct a hearing.

If it is your desire to furnish additional information to be incorporated in your file please forward to this board at once.

Very truly yours,

For the Local Board:  
H. J. Bittle  
Clerk

---

HJB: eg

**GOVERNMENT'S EXHIBIT 2 AO****DEPARTMENT OF JUSTICE****Washington, D. C.**

**Appeal Board  
Illinois  
JAN 26 1953  
523 Plymouth Ct.  
Chicago 5, Ill.**

**January 23, 1953**

**Chairman, Appeal Board, Northern  
District of Illinois  
Selective Service System  
523 Plymouth Court  
Chicago, Illinois**

**Re: Anthony Tony Sicurella  
S. S. No. 11-14-27-188**

**Dear Sir:**

As required by section 6(j) of the Universal Military Training and Service Act, an inquiry was made in the above-mentioned case and an opportunity to be heard on his claim for exemption as a conscientious objector was given to the registrant by Honorable Roy O. West, Hearing Officer for the Northern District of Illinois.

Registrant is twenty-five years of age, single and a high school graduate. Since January 1944 he has been employed as a clerk by the Railway Express, in Chicago, Illinois. Together with his parents registrant is a member of the Jehovah's Witnesses. In his SSS Form No. 100, filed in January 1949, registrant states that he has been a "minister" of the sect since 1934, and that he was formally ordained in January 1944. He did not sign Series XIV indicating conscientious objection to war but did indicate that he should be classified 4-D as a minister. Registrant was classified I-A in October, 1950, and first advanced his conscientious objector claim in February, 1951. In his SSS

Form No. 150 registrant describes the nature of his claim as follows: ". . . I am already in the Army of Christ Jesus serving as a soldier of Jehovah's appointed Commander Jesus Christ. . ." He relies on the Watchtower Bible and Tract Society for religious guidance and received the training and acquired the belief which is the basis of his claim "through regular Bible study in the most efficient ministry school in the world, . ." Registrant believes in the use of force "only in the interests of defending Kingdom Interests, our preaching work, our meetings, our fellow brethren and sisters and our property against attack. I (as well as all Jehovah's Witnesses) defend those when they are attacked and are forced to protect such interests and scripturally so . . ."

The investigation reflects that neighbors, associates, employers, fellow workers, teachers and references all advised that registrant is of good character and reputation. References and fellow church members advised that registrant has been an active member of the Jehovah's Witnesses for approximately ten years in the Chicago area and believe him to be sincere in his religious convictions. High school teachers, some fellow employees and neighbors, however, are not aware of registrant's religious training or his convictions of the matter of participation in war. One fellow employee feels that registrant is "trying to dodge the draft and that he is not sincere in his claim as a conscientious objector" but he could offer no facts to substantiate this belief.

Registrant appeared for his hearing accompanied by a number of members from his Jehovah's Witnesses unit, all of whom attested to his good character and the sincerity of his claim. Registrant stated that he attends Jehovah's Witnesses meetings regularly and devotes eight hours a week as a minister to that cause. He further stated that he has been "Study Conductor" for that group for four years; that he attends Church services every Sunday; that he prays daily, says Grace at meals and studies his Bible.

The Hearing Officer stated he was convinced that regis-

trant has sincere objections to military service by reason of his religious training and beliefs and he recommended a I-O classification.

While the registrant may be sincere in the beliefs he has expressed, he has, however, failed to establish that he is opposed to war in any form. As indicated by the statements on his SSS Form No. 150, registrant will fight under some circumstances, namely in defense of his ministry, Kingdom Interests, and in defense of his fellow brethren. He is, therefore, not entitled to exemption within the meaning of the Act.

After consideration of the entire file and record, the Department of Justice finds that the registrant's objections to combatant and noncombatant service are not sustained. It is, therefore, recommended to your Board that registrant's claim for exemption from both combatant and non-combatant training and service be not sustained.

The Selective Service Cover Sheet in the above case is returned herewith.

Sincerely,  
[Signature]  
**T. Oscar Smith**

**Special Assistant to the Attorney General**

**Appeal Board  
Illinois  
JAN 26 1953  
523 Plymouth Ct.  
Chicago 5, Ill.**

---

**GOVERNMENT'S EXHIBIT 2 AP****SELECTIVE SERVICE SYSTEM  
INDIVIDUAL APPEAL RECORD**

**AUG 14 1952**

**(Local Board Date Stamp)**

**Name of registrant (Last) *Sicurella* (First) *Anthony* (Middle) *Tony* Selective Service Number *11 14 27 188***

Classified by local board in Class 1-A until . . .  
Date classified *July 14, 1952*

X Forwarded on appeal taken by *Registrant*  
Date forwarded to Appeal Board *August 14, 1952*

*H. J. Bittle*  
Clerk of Local Board

Minutes of Action by Appeal Board

Appeal Board *Northern District Panel N-II* for the  
State of . . . *Illinois* . . . *AUG 15 1952* [Appeal Board  
Stamp]

Classified in Class 1A until . . . by the following vote:  
Yes 4 No 0 (Date of classification by Appeal Board)  
**FEB 10 1953**

[Signature]  
Member or Clerk of Appeal Board

\* \* \*

SSS Form No. 120

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**GOVERNMENT'S EXHIBIT 2 AQ**

**SELECTIVE SERVICE SYSTEM  
ORDER TO REPORT FOR INDUCTION**

**FEB 19 1953**

(Local Board Date Stamp with Code)

**FEB 19 1953** (Date of mailing)  
The President of the United States,

To (First name) *Anthony* (Middle name) *Tony* (Last  
name) *Sicurella* (Selective Service Number) *11 14 27 188*  
(Street and number) *2642 North McVickers Avenue* (City)  
*Chicago 39* (State) *Illinois*

Greeting:

Having submitted yourself to a Local Board composed  
of your neighbors for the purpose of determining your  
availability for service in the armed forces of the United  
States, you are hereby ordered to report to the Local Board

named above at (Place of reporting) *615 West Van Buren St; 4th floor, Chicago, Ill.*, at (Hour of reporting) *7:00 A m., promptly on the 5th day of March, 1953* for forwarding to an induction station.

\* \* \*

[Signature]  
Member of Local Board

SSS Form No. 252

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\* \* \*

### **GOVERNMENT'S EXHIBIT 2 AR**

Anthony T. Sieurella  
2642 No. McVickers Ave.  
Chicago 39, Illinois  
February 26, 1953

Local Board No. 14  
Selective Service System  
226 West Jackson Blvd  
Chicago 6, Illinois

Gentlemen:

In asking Mr. Bittle to see my file in your office at about 4:00 P.M. on Thursday - February 26, 1953, after looking through it I found that part of my file is missing and incomplete. The following I did not see: a copy of my Presidential Appeal dated Febraury 3, 1951. The Legal Booklet, which stresses and points out my reason for the classification I asked for, a IV-D according to law. And also the out-come of or from the hearing I had before Mr. Roy C. West in the Old Post Office Building and the F.B.I. report of which I have the right to see.

I wish to know just how or why these items are missing from my file. And how a classification can be given a registrant whose file is incomplete.

To explain further I will gladly appear before you at a set date.

I would also like to inform you that I send in another Presidential Appeal, and explaining to him or them that I got an Induction Notice before my ten days of appeal from my last classification was up or due.

I also notice that in my file both you the Local Board and the Appeal Board failed to recognize section 6(j) of the Selective Service Acts in determining my proper classification of which reads in part:

Sec. 6(j) if the objector is found to be conscientiously opposed to participation in such non-combatant service, he shall be deferred.

Tusting all this will be *straightn'd* out, also my Induction Notice which is scheduled for March 5th, 1953, I remain:

Respectfully yours  
Anthony T. Sieurella  
11 14 27 188

FEB 27 1953

[Local Board Stamp]  
cc: National Hdqtrs

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**GOVERNMENT'S EXHIBIT 2 AS**  
**CHICAGO ARMED FORCES EXAMINING**  
**INDUCTION & RECRUITING MAIN STATION**  
**615 West Van Buren Street**  
**Chicago 7, Illinois**

6 March 1953

**Local Board No. 14**  
**Selective Service System**  
**226 West Jackson Blvd**  
**Chicago 6, Illinois**

**Re: Sieurella, Anthony Tony**  
**SS# 11 14 27 188**

Gentlemen:

The above named registrant reported to this station on 5 March 1953, for induction into the U. S. Armed Forces. Upon arrival at this station Mr. Sieurella refused to be inducted.

In compliance with Paragraph 27b, Special Regulations 615-180-1, Department of the Army, dated 5 November 1951 letter as required explaining the action of subject registrant have been forwarded to the U. S. District Attorney, and the State Director of Selective Service.

Transmitted herewith are registrants DD Forms 47 and other allied papers. Copy of above mentioned letter is also forwarded for your files.

Very truly yours,  
[Signature]  
Harold Gramm  
1st Lt Infantry  
OIC, Induction Section

10 Incls.

\* \* \*

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**GOVERNMENT'S EXHIBIT 2 AT**

**RECORD OF INDUCTION**

\* \* \*

**MAR 5 1953**

[Local Board Stamp]

1. Last Name - First Name - Middle Name

*Sicurella, Anthony Tony*

2. Service No. . . . US55-377-353

\* \* \*

4. Selective Service No. 11 14 27 188

\* \* \*

- 10a. Present Civilian Trade or Occupation . . . Minister (*Watchtower Bible and Tract Society*)

\* \* \*

DD Form 47 . . .

[Page 2]

\* \* \*

## Section VI - Results of Preinduction Examination . . .

23. I certify that the qualifications of the above named registrant have been considered in accordance with the current regulations governing the acceptance of Selective Service registrants and he was this date:

- a.  Found acceptable for service in the Armed Forces

\* \* \*

Date MAR 5 1953 Place *Induction Station, Chicago Ill.*

\* \* \*

*Earl Eubanks  
Major USAF*

\* \* \*

\* \* \*

**NOTICE OF APPEAL**

(Filed October 1, 1953)

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
Eastern Division

(Caption—53 CR 288)

\* \* \*

**I.**

Name and address of appellant is ANTHONY TONY SICURELLA, 2642 North McVickers Avenue, Chicago, Illinois.

**II.**

Name and address of appellant's counsel is KARL M. MILGROM, 19 South La Salle Street, Chicago, Illinois.

**III.**

Offense: A violation of the Universal Military Training and Service Act, Section 462, Title 50, Appendix, United States Code, by failure to submit to induction.

**IV.**

The defendant was convicted upon a plea of not guilty of the above-described offense by a finding of guilty by the Court, and was sentenced and committed on September 23, 1953 to the custody of the Attorney General of the United States for a period of two years.

**V.**

The above-named appellant hereby appeals to the United States Court of Appeals for the Seventh Circuit from the above-stated judgment.

Dated October 1, 1953.

Karl M. Milgrom  
Counsel for Appellant

---

\* \* \*

**STATEMENT OF POINTS**

(Filed October 26, 1953)  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
Eastern Division

(Caption—53 CR 288)

Now comes the defendant-appellant in the above cause and states the points on which he intends to rely on the appeal.

**ONE.**

The trial court committed error in granting the motion to quash the subpoena duces tecum issued by the Clerk of that court at the request of the defendant, requiring the

production at the trial of a certain Federal Bureau of Investigation investigative report submitted to Roy West, as Hearing Officer of the United States Department of Justice, in connection with the hearing conducted by said Hearing Officer relating to the conscientious objector Selective Service status of the defendant.

## TWO.

The trial court committed error in excluding the respective testimonies of the defendant, and his brothers, PAT SICURELLA and JOSEPH SICURELLA, as to the remarks of MR. DE LEONARDIS, a member of the local draft board, said remarks being made immediately prior to the defendant's hearing before that board, and indicating prejudice against the defendant because of his religion, which prejudice deprived him of a fair hearing. The proffered testimonies and offers of proof are too long to be included here. See: from about pages 48 to 51, inclusive, of the stenographic transcript of proceedings as to such excluded testimony of the defendant; about pages 86 and 87, as to such excluded testimony of PAT SICURELLA; and about pages 90 and 91, as to such excluded testimony of JOSEPH SICURELLA.

## THREE.

The trial court erred in overruling the motion for judgment of acquittal made at the close of all the testimony.

## FOUR.

The trial court erred in sentencing the defendant.

WHEREFORE, defendant-appellant prays that upon appeal the trial court's judgment be reversed for each and every one of the reasons set forth in the above points upon appeal.

Karl M. Milgrom  
Attorney for Defendant-Appellant,  
Anthony Tony Sicurella

\* \* \*

\* \* \*

[fol. 109]

[Caption omitted]

IN UNITED STATES COURT OF APPEALS FOR THE  
SEVENTH CIRCUIT

No. 11012

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

ANTHONY TONY SICURELLA, DEFENDANT-APPELLANT

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

## DOCKET ENTRIES

Nov. 7, 1953. Filed Transcript of Record.

Nov. 7, 1953. Filed appearance for appellant. (K. M. Milgrom)

Nov. 14, 1953. Filed Election of counsel to print record.

Nov. 17, 1953. Filed Appearance for appellee. (Otto Kerner, James B. Parsons)

Nov. 20, 1953. Filed appearance for appellant. (Hayden C. Covington)

Nov. 20, 1953. Filed original and 4 copies Motion and Stipulation to extend time for designation to Dec. 5, 1953.

Nov. 24, 1953. Entered order extending time for appellant's Designation to Dec. 5, 1953.

Dec. 4, 1953. Filed Appellant's Designation.

Dec. 28, 1953. Filed 50 copies Printed Record.

Jan. 14, 1954. Filed 30 copies Appellant's Brief.

Feb. 17, 1954. Filed original and 4 copies motion and affidavit to extend time for appellee's Brief to Mar. 22, 1954.

Feb. 23, 1954. Entered order extending time for appellee's Brief to Mar. 22, 1954.

Mar. 22, 1954. Filed original and 4 copies Motion and affidavit to extend time for appellee's Brief to Apr. 15, 1954.

Mar. 26, 1954. Filed original and 4 copies answer to Motion.

Mar. 26, 1954. Entered order extending time for appellee's Brief to April 5, 1954.

Apr. 5, 1954. Filed 30 copies appellee's Brief.  
Apr. 14, 1954. Filed original and 4 copies motion and affidavit to extend time for Reply Brief to Apr. 20, 1954.  
Apr. 14, 1954. Entered order granting Motion.  
Apr. 19, 1954. Filed 30 copies Reply Brief.  
Apr. 21, 1954. Heard and taken under advisement.  
Apr. 23, 1954. Filed 4 typed appellants Memorandum.  
May 7, 1954. Entered order that appellee's Supplemental Memorandum be filed nunc pro tunc as of May 4, 1954.  
May 7, 1954. Filed 5 copies typed Appellee's Memorandum nunc pro tunc as of May 4, 1954.  
Jun. 15, 1954. Filed Opinion by Lindley, C.J.  
Jun. 15, 1954. Entered Judgment Affirming.  
Jun. 18, 1954. Filed Designation of Supreme Court Record.

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[fol. 110] IN THE UNITED STATES COURT OF APPEALS FOR  
THE SEVENTH CIRCUIT, OCTOBER TERM, APRIL SESSION, 1954.

No. 11012

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

ANTHONY TONY SICURELLA, DEFENDANT-APPELLANT

Appeal from the United States District Court for the  
Northern District of Illinois, Eastern Division

OPINION—Filed June 15, 1954

Before MAJOR, *Chief Judge*, DUFFY and LINDLEY, *Circuit Judges*.

LINDLEY, *Circuit Judge*. This appeal is companion to *United States v. Robert Simmons*, No. 11011. Although the cases were combined for oral argument, separate opinions seem desirable for purposes of clarity.

The appeal is taken from a judgment of conviction of refusing to submit to induction into the armed forces in violation of 50 App. U.S.C. Sec. 462. In his questionnaire appellant stated that he was an ordained minister of Jeho-

vah's Witnesses and a student at a ministry school operated by that sect. He asserted a right to a IV-D, minister of religion classification. This claim was ultimately denied by the selective service authorities and is not in issue before us.

In his questionnaire appellant asserted no claim to conscientious objector status. After denial of his ministerial claim, he filed an application for a I-O, conscientious objector, classification, in which he asserted that by reason of his religious training and belief he was conscientiously opposed to participation in war in any form. He was [fol. 111] granted a hearing on this claim by his local board, which classified him I-A. Appellant took an appeal from this classification to the state appeal board. His file was referred by the appeal board to the Department of Justice for its investigation and recommendation. An investigation was conducted by the F.B.I. A hearing was held before a Department hearing officer at which appellant appeared, together with a number of witnesses in his behalf. At his trial he testified that he asked the hearing officer for a summary of the adverse evidence contained in his F.B.I. file. He quoted the hearing officer as answering, "There is no use telling you, because it is favorable." The hearing officer recommended to the Department that his claim be sustained. Because appellant had expressed a willingness to use force in defense of "Kingdom Interests", and therefore was not opposed to war in any form, the Department of Justice in its report recommended to the appeal board that his claim be denied and that he be classified I-A.

The appeal board classified him I-A and the induction order followed. Appellant admits that he refused to submit to induction when ordered to do so, but contends that the order is void, averring that there is no basis in fact for denying his conscientious objector claim and that he was denied due process of law in certain stages of the classification process to be subsequently related.

We have previously outlined the principles guiding our determination of the basis in fact question in the opinion in *United States v. Simmons*. Applying those principles, on the record before us we cannot say that the appeal

board's denial of appellant's claim was without basis in fact. The question whether a belief in the use of force in self-defense and in theocratic warfare is incompatible with a claim of conscientious objection has been considered by the courts of several circuits. In *United States v. Dal Santo*, 205 F. 2d 429, 433, cert. denied 346 U.S. 858, we expressed the view that a denial of a conscientious objector classification solely on the basis that, "believing in self-defense", a registrant "could not qualify as a conscientious objector" would, at most constitute an erroneous classification which would be final and not subject to correction by judicial review. In *Annett v. United States*, 205 F. 2d 689, the Court of Appeals for the Tenth Circuit, one judge dissenting, held void a classification denying Annet's claim [fol. 112] to conscientious objector status which the court found was based solely on the defendant's expressed belief in the use of force in self-defense. This decision has been followed in *United States v. Taffs*, 208 F. 2d 329, cert. denied 347 U.S. 928 (C.A. 8); *United States v. Hartman*, 209 F. 2d 366 (C.A. 2); and *United States v. Pekarski*, 207 F. 2d 930 (C.A. 2).

In view of the most recent pronouncement by the Supreme Court in *Dickinson v. United States*, 346 U.S. 389, 396, that courts may not apply "a test of 'substantial evidence'" to this type of case, it would appear that the cases last cited rest on an incorrect theory of the scope of judicial review, thus rendering their authoritative value speculative. The majority of the court in the *Annet* case treated the expression of belief in the use of force for limited purposes as evidentiary but reversed Annet's conviction because of a "lack of any substantial evidence" to support the board's denial of his conscientious objector claim. The court in the *Pekarski* case reiterated this test in holding a classification order void because supported by "no substantial evidence." The courts in the *Hartman* and *Taffs* cases based their decisions solely on the basis of the majority opinion in *Annet* without the benefit of any discussion of the merits of that decision.

We think that this court, speaking through Judge Duffy, expressed the correct view in the *Dal Santo* case. Whether or not appellant's willingness to use force in defense of

"Kingdom Interests" is incompatible with a claim of conscientious objection to participation in war, his statement is an appropriate factor for the board to consider when ruling on his claim as bearing on the question whether he has brought himself within the statutory privilege. Furthermore, this circumstance does not stand alone in the record before us. Statements made by appellant in his SSS Form 150 express an objection to any and all obedience to secular authority. Thus he stated that he is "no part of this world which is governed by political systems," that he conscientiously objects "to serving in any military establishment or any civilian arrangement that substitutes for military service" and that he "cannot desert the forces of Jehovah to assume the obligations of a soldier of this world without being guilty of desertion."

Two things are apparent on the face of these statements, [fol. 113] *i.e.*, that appellant set himself separate and apart from all other persons as immune from the constitutional dictates of the national government and that he is asserting a claim of exemption extending to both military and civilian service under the Act, a claim which goes beyond the statutory exemption. 50 App. U.S.C. See. 456(j). These claims are consistent only with objections to any command of governmental authority, but do not *per se* establish that deep seated conscientious belief which would entitle appellant to the claimed exemption. On this basis the board could conclude that appellant had not proved himself within the terms of the statutory privilege. Only the boards, local and appellate, are empowered to make that determination. We cannot say that the order here challenged is without a basis in fact.

Equally wanting in merit is appellant's contention that the order is tainted by fatal error on the part of the Department of Justice and therefore void. This contention is twofold, *viz.*, that the Department erred in rejecting the hearing officer's recommendation that appellant's claim be allowed and that the recommendation to the appeal board was based on an erroneous ground that a belief in the use of force under certain circumstances is incompatible with a claim of conscientious objection to war. Suffice it to state as to the former that the hearing officer's report

is merely advisory and only one of the factors considered by the Department in framing its recommendation to the board. As to the latter, if we assume that the Department's recommendation to the appeal board was based on an erroneous ground, that report is advisory only and was, as we have previously indicated, predicated on an evidentiary factor competent for consideration by the appeal board, the body charged by the Act with the duty to make the determinative judgment on each appealing registrant's claim. 50 App. U.S.C. Sec. 456(j); *United States v. Nugent*, 346 U.S. 1, 9.

For the reasons stated in *United States v. Simmons*, appellant's principal contentions must also fail. As did Simmons, appellant contended below that he was entitled as a matter of right to a full summary of the adverse evidence in his F.B.I. file at the time of his Justice Department hearing and that, therefore, the file must be produced at his trial to enable the court to determine whether he was given this requisite summary. To this end he procured the [fol. 114] issuance of a subpoena *duces tecum* to compel the production of the file at his trial. On the government's motion, the court below quashed the subpoena. This action is assigned as error. In view of what was said in the *Simmons* case, it is sufficient to state that no prejudice to appellant is shown on the face of the record.

Appellant testified that he was told by the hearing officer that the F.B.I. report was favorable to his claim. The report of the Department of Justice to the appeal board states that the evidence in the file is favorable and that the Department placed no credence in an adverse opinion by one person questioned by the F.B.I. "who could offer no facts to substantiate" this opinion. The file was never before the appeal board; nothing before that body indicated that any adverse evidence was contained in it. This situation is essentially similar to that which the Supreme Court recited as refuting an alleged denial of the right to be advised of evidence adverse to the registrant's claim in *United States v. Packer* (*United States v. Nugent*), 346 U.S. at page 7, n. 10. Appellant cannot have been prejudiced by adverse evidence, if any, contained in the secret file. That file was irrelevant to any issue before the court below and the court properly quashed the subpoena.

On the record before us we cannot say that the denial of appellant's claim was without basis in fact or that appellant was denied due process of law in any stage of the administrative process. The judgment is affirmed.

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[fol. 115] IN UNITED STATES COURT OF APPEALS

Tuesday, June 15, 1954

Before:

Hon. J. Earl Major, Chief Judge

Hon. F. Ryan Duffy, Circuit Judge

Hon. Walter C. Lindley, Circuit Judge

No. 11012

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

ANTHONY TONY SICURELLA, DEFENDANT-APPELLANT

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

JUDGMENT—Entered June 15, 1954

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by Counsel.

On consideration whereof: It is ordered and adjudged by this Court that the Judgment of the said District Court in this cause appealed from be, and the same is hereby, affirmed.

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[fol. 116] Clerk's Certificate to foregoing transcript omitted in printing.

[fols. 117-118] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF  
CERTIORARI—Filed June 23, 1954

UPON CONSIDERATION of the application of counsel for petitioner,

IT IS ORDERED that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including August 14, 1954.

SHERMAN MINTON,  
*Associate Justice of Supreme  
Court of the United States.*

Dated this 28 day of June, 1954.

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[fols. 119-120] [File endorsement omitted.]

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[fol. 121] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed October 14, 1954

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

*30*  
*30*  
**SUPREME COURT, U.S.**

Office - Supreme Court, U. S.

**FILED**

JUL 30 1954

HAROLD B. WILLEY, Clerk

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# Supreme Court of the United States

OCTOBER TERM, 1954

**No. 250**

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**ANTHONY TONY SICURELLA,**

*Petitioner*

v.

**UNITED STATES OF AMERICA,**

*Respondent*

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**Petition for Writ of Certiorari  
to the United States Court of Appeals  
for the Seventh Circuit**

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*Counsel for Petitioner*

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# Supreme Court of the United States

OCTOBER TERM, 1954

No.

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ANTHONY TONY SICURELLA,

*Petitioner*

v.

UNITED STATES OF AMERICA,

*Respondent*

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## Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

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TO THE SUPREME COURT OF THE UNITED STATES:

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit, affirming the judgment of the United States District Court for the Northern District of Illinois, Eastern Division, convicting the petitioner of a violation of the Universal Military Training and Service Act and sentencing him to the custody of the Attorney General.

### OPINION BELOW

The opinion of the Court of Appeals is not yet reported. It is printed as Appendix A to this petition. The opinion

of the Court of Appeals in the companion case of *United States v. Simmons*, referred to in the opinion in this case by the Court of Appeals is an appendix to the petition in the companion petition, *Simmons v. United States*.

## JURISDICTION

The judgment of the Court of Appeals was entered on June 15, 1954. The time for filing this petition for writ of certiorari has been extended to August 14, 1954. This petition for writ of certiorari is filed within the extended time. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1). See also Rules 37(b)(2) and 45(a), Federal Rules of Criminal Procedure. The district court has jurisdiction under 18 U. S. C. § 3231.

## QUESTIONS PRESENTED

### I.

The undisputed evidence showed that petitioner had conscientious objections to participation in both combatant and noncombatant military service. He showed that these objections were based on his sincere belief in the Supreme Being. The file established without dispute that his obligations were superior to those owed to the state or which arose from any human relation. There was no showing that these beliefs flowed from any political, philosophical or sociological views. The undisputed evidence showed that the objections were based solidly on the Word of God and the obligations that Sicurella had to the Supreme Being.

The question here presented, therefore, is whether the denial of the claim for classification of petitioner by the appeal board as a conscientious objector was without basis in fact and, consequently, the final I-A classification was arbitrary and capricious.

### II.

Section 6(j) of the act and Section 1626.25 of the Se-

lective Service Regulations provide for the reference of the conscientious objector claim to the Department of Justice for appropriate inquiry and hearing. This is followed by a recommendation by the department to the appeal board on the conscientious objector claim. Petitioner had a hearing, after inquiry, that was followed by a report of the hearing officer to the Department of Justice and a recommendation to the Assistant Attorney General to the appeal board. The hearing officer of the Department found petitioner to be a sincere and bona fide conscientious objector, but the Assistant Attorney General recommended against the conscientious objector status. The draft board file of petitioner showed that while he was conscientiously opposed to direct participation in the armed forces he was willing to defend himself and his Christian brothers, Jehovah's Witnesses.

While the Department of Justice hearing officer did not place any weight on his willingness to defend himself the Assistant Attorney General in his recommendation to the appeal board did consider this as a basis for the denial of the conscientious objector status. The Court of Appeals held that there was basis in fact for a denial of the conscientious objector status also for this reason stated by the Assistant Attorney General in his memorandum. The Court of Appeals held that because petitioner was willing to defend himself and his brothers he was not a conscientious objector.

A question presented, therefore, is whether the act and the regulations permit the Department of Justice to recommend to the appeal board to deny, and may the appeal board deny, the conscientious objector status because the petitioner, an objector to direct participation in the armed forces, is willing to defend himself and his brothers by the use of force.

## **STATUTES AND REGULATIONS INVOLVED**

Section 1(e) of the Universal Military Training and Service Act (50 U. S. C. App. (Supp. V) § 451(e)) is involved. Also Section 6(j) of the act must be considered (50 U. S. C. App. (Supp. V) § 456(j), 65 Stat. 75, 83, 86). See also Section 12(a) of the act (50 U. S. C. App. (Supp. V) § 462(a)).

Sections 1622.14, 1626.25 and 1626.26 of the regulations (32 C. F. R. §§ 1622.14, 1626.25 and 1626.26) are involved.

These are extensive provisions. They are printed as Appendix B at the end of this petition, pages 23-28.

## **STATEMENT OF THE CASE**

### **THE FACTS**

Petitioner was born on June 13, 1927. [51, 53]<sup>1</sup> He registered with his local board on September 11, 1948. [52, 53] The local board mailed to him the classification questionnaire. [54-55] On January 15, 1945, Sicurella returned his questionnaire properly filled out and filed it with the local board. He identified himself by giving his name and address. He then showed that he was a minister of religion. He answered that he regularly served as such. He then said that he had been a minister of Jehovah's Witnesses since 1934. He added that he was formally ordained in January of 1944 in Chicago. [55-56]

He answered that he was a student preparing for the ministry also. [56] At the trial he explained in his testimony that while he was a minister he continued to attend school and study Bible courses so that he could keep up to date. He said this was the reason he answered that he was a student of the ministry. [43]

In the questionnaire Sicurella also showed that he was a clerk for the Railway Express Agency. [56-57]

<sup>1</sup> Numbers appearing herein within brackets refer to pages of the printed record in this case.

He showed that he worked 44 hours per week in this job.  
[56-57]

Sicurella showed that he had attended eight years of elementary school. He also attended two years of junior high school and two years of high school, having graduated. [57] Sicurella failed to sign the conscientious objector blank appearing in the questionnaire. [57] At the trial he explained to the court the reason why he had failed to sign the conscientious objector blank. He said that he thought that according to law he had to "claim either IV-D or I-O, so I claimed the more important one to me that of IV-D." [19]

In the conclusion of his classification questionnaire Sicurella claimed classification in Class IV-D, the minister's exemption provided for in the regulations. [58] The local board on March 1, 1949, recognized his claim for exemption as a minister of religion. The board placed him in Class IV-D. [58] He was notified of this. [58]

The local board on September 20, 1950, notified Sicurella to appear for hearing on September 26, 1950. The memorandum made by the local board on the date he was notified shows that the board wrote to State Headquarters "for law on the Jehovah's Witnesses before the board will act." [58] The local board on October 9, 1950, placed Sicurella in Class I-A. [58] He was notified of this. [58] Sicurella requested a personal appearance on October 16, 1950. [62-63] He also filed with the local board on the same date affidavits and certificates showing that he was pursuing the ministry and as a basis for his ministerial activity he was entitled to the exemption. [60-62]

Sicurella on October 17, 1950, called the board about the hearing. The local board then on November 3, 1950, notified him to appear before it with evidence on November 8. [59] On November 8, 1950, Sicurella filed with the local board a list of scriptures showing that he had conscientious objections to war. He also filed petitions and certificates as to his ministerial status. [64-65] The local board on November 8, 1950, classified Sicurella in Class I-A. This made him liable

for unlimited military training and service. [59] He was notified of this classification. [59]

Sicurella wrote the board a letter of appeal on November 11, 1953. In this letter of appeal he requested another personal appearance. [66] The local board notified him. They told him he was not entitled to another personal appearance. [67] The board then notified him to report for preinduction physical examination on November 27, 1950. [67-68] He was declared to be physically acceptable for training and service. [59, 60] He was notified of his acceptability by the local board on December 8, 1950. [59, 70]

Sicurella, on December 10, 1950, filed with the local board a letter showing his Scriptural argument and basis for his conscientious objections to combatant and noncombatant military service. [69-70]

The appeal board on January 17, 1951, classed Sicurella for unlimited military training and service in the armed forces. He was placed in Class I-A. [59] The file was returned to the local board and he was notified of this classification. [59] Sicurella on January 26, 1951, requested a personal appearance. He again stated that he was a conscientious objector. [72, 73, 74]

On January 31, 1951, the local board wrote Sicurella and told him that there would be no personal appearance granted to him. [74] On February 5, 1951, Sicurella notified the local board that he was appealing to General Hershey for relief against the actions taken by the board. [75]

Sicurella, on February 9, 1951, filed with the local board a conscientious objector form that he had requested on February 5, 1951. [59, 76] In the conscientious objector form he signed Series I(B). In this he certified that he was conscientiously opposed to both combatant and noncombatant military service. [76] Sicurella showed he believed in the Supreme Being. [76] He described the nature of his beliefs as a conscientious objector. He showed that he was in the army of Christ Jesus. He emphasized that the weapons of his warfare were spiritual and not carnal. He told the board

that he believed in rendering unto Caesar the things that are Caesar's. He added, however, that he did not believe in rendering unto Caesar the things that belonged to God. [76-77, 81-82]

Sicurella showed the local board that he got his conscientious objections from a deep and serious study of the Bible. [77]

Sicurella answered that he relied on the Bible and the Watchtower Bible and Tract Society for religious guidance and instruction. [77] In answer to the question as to whether he believed in the use of force he stated that he believed in using force only to the extent of defending the Kingdom interests. This included self-defense and the defense of his brothers. He certified that he did not use weapons and if necessary he would retreat when attacked in order to avoid trouble. [77-82]

Sicurella stated that the behavior and the conduct of his life which consistently demonstrated the depth of his conviction was that he had been preaching the gospel of Jehovah's Witnesses since he was six years old. He indicated that he preached publicly and from house to house. He otherwise showed that he had pursued a consistent course of action as one of Jehovah's Witnesses since childhood. [77-78]

Sicurella showed that he had publicly expressed his stand as a Christian minister and as a conscientious objector when he was baptized. He indicated that from the Bible he believed that the Kingdom of Almighty God was not of this world. He showed that he must maintain strict neutrality and that he had expressed himself on this view. [78, 82]

Sicurella then listed the schools he had attended, the jobs at which he had been employed, and the addresses of the places where he had lived. [78-79] He showed that his parents were Jehovah's Witnesses. [79] He answered that he had never been a part of any military organization. [79]

Sicurella showed that he was a member of a religious organization. He showed that this was Jehovah's Witnesses

and that the legal governing body of that group was the Watchtower Bible and Tract Society. He answered that he had been brought up in the faith of Jehovah's Witnesses. He showed the address of his church and named the presiding minister. [80] He described the creed of Jehovah's Witnesses in opposition to participation in war. He showed that they believed that the Kingdom of Almighty God was not of this world. He certified that they were neutral to the conflicts of this world. [80] He said that he was an ordained minister of religion preaching the gospel of God's Kingdom. [80]

Sicurella concluded his conscientious objector form by giving references to persons who would vouch for his sincerity. He then signed the form. [80-81]

When the conscientious objector form was filed with the local board the local board did not reopen his case and reconsider it, as required by law. The board forwarded the file on February 16, 1951, to the State Director for his review. [59] The State Director, on February 21, 1951, wrote the local board that it should reopen and reconsider his case. He also informed the board that it would be necessary to consider the claim of Sicurella as a minister of religion and as a conscientious objector. [83-84]

The local board, on reopening and reconsidering his case, classed Sicurella in Class IV-D. This exempted him for the second time as a minister of religion. This was on March 12, 1951. [59] He was notified of this classification. [59]

Sicurella stayed in this exempt status until March, 1952. The local board, on March 10, 1952, forwarded his file to the State Headquarters for review. [59, 84-85] The State Headquarters reviewed his file and advised the board that in the opinion of the State Director Sicurella did not qualify for the ministerial exemption or Class IV-D. [85-86] The local board then on March 17 classified him in Class I-A and he was later notified of this classification. [59]

Sicurella on March 24 wrote a letter to the local board

requesting a personal appearance. [59, 86-87] The local board then notified him to appear before it on April 7. [59, 87] On April 7, following personal appearance, the local board classified Sicurella again as liable for unlimited military service. He was placed in Class I-A. He was then notified of this classification. [59]

Sicurella then took an appeal to the appeal board on April 18, 1952. [59, 88-89] On that date his file was forwarded to the appeal board. [59, 89] The appeal board then placed Sicurella in Class I-A on May 21, 1952. [59, 90] The file was returned to the local board and Sicurella was notified of the I-A classification by the appeal board on May 23, 1952. [59]

The State Director was written a letter dated May 31, 1952, by Sicurella. He complained of the action by the appeal board. He charged that he had been illegally dealt with by the boards. [90-91] The State Director wrote Sicurella that it was up to the local board to classify him. [92] The file was called in to State Headquarters, however, by the State Director for study and review. [60, 93-94]

The State Director then wrote a letter to the local board calling attention to the fact that Sicurella's procedural rights on personal appearance had been violated by the board. [94-95]

The local board wrote Sicurella to appear before it on July 14, 1952. [60, 95-96] Sicurella appeared before the local board on July 14. [60] The personal appearance was very summary in nature. It was brief. Very few questions were asked. An extremely short memorandum of the personal appearance was made by the local board. The testimony showed that one of the board members stated to Sicurella that they knew he was a minister of religion but that they were not able to classify him as a minister because it was over their head. Apparently the board member was referring to the earlier letter from the State Director giving opinion that Sicurella was not entitled to the minister's exemption. [24]

The trial court excluded testimony offered by the defendant to show prejudice of the board members against Jehovah's Witnesses and a denial of the claim for exemption by determining on a class basis that Jehovah's Witnesses are not ministers rather than considering *de novo* the particular claim of Sieurella. Offers of proof were made showing what the testimony would have been had it been admitted. [22-23, 46-47, 49-50]

The memorandum made by the local board following the personal appearance merely showed that Sieurella was ordained in February of 1943 by his congregation. It stated that he held services in the church twice a month and referred to the basis for the claim for classification as a minister of religion. [96]

The local board, following the personal appearance, on July 14, 1952, classified Sieurella in Class I-A. It notified him of the classification. [60] Sieurella then on July 21, 1952, appealed his classification. [97] There was an FBI investigation on his claim for classification as a conscientious objector. This investigation preceded a hearing in the Department of Justice before the hearing officer. The hearing officer notified Sieurella to appear before him on January 13, 1953, for a hearing. [26] Sieurella appeared for the hearing as notified by the officer. [26] He brought along with him to the hearing twelve witnesses to vouch for his sincerity and good faith in making his claim for classification as a conscientious objector. [26]

At the personal appearance before the hearing officer Sieurella asked the hearing officer for the FBI report. The hearing officer said that there was no use in showing it to him because it was favorable to Sieurella. [26] Sieurella then asked the hearing officer, Roy West, to please give him a summary of the unfavorable evidence in the FBI report. The hearing officer then replied: "There is no use in telling you because it was favorable." [26] At the close of the hearing, Hearing Officer West told Sieurella that he believed he was a sincere conscientious objector. He stated that he

would recommend favorably to the Department of Justice and suggest that Sicurella be classified as a conscientious objector. [27]

The file and the report of the hearing officer were sent in to the Department of Justice at Washington. The Assistant Attorney General reviewed the case and the report of the hearing officer. [99-101] The Assistant Attorney General, after stating the history of Sicurella's case, referred to the recommendation of the hearing officer. He said that the hearing officer was convinced that Sicurella was sincere and that his conscientious objections were based on religious training and belief. He stated that the hearing officer recommended the conscientious objector classification to be given to the defendant. [100-101]

The Assistant Attorney General did not follow the recommendation of the hearing officer. He did not reject the report of the hearing officer because Sicurella was not sincere. The Assistant Attorney General recognized that Sicurella was sincere. He recommended against Sicurella because he "failed to establish that he is opposed to war in any form." The Assistant Attorney General noted that Sicurella would defend himself, his ministry and his fellow brothers. The Assistant Attorney General held that because Sicurella would exercise his legal and Biblical right of self-defense he was not entitled to the conscientious objector exemption "within the meaning of the act." [101] The Assistant Attorney General then recommended to the appeal board that the claim for classification as a conscientious objector "be not sustained." [101]

The appeal board, on February 10, 1953, classified Sicurella in Class I-A. [101-102] The file was returned to the local board and Sicurella was notified of the classification that made him liable for military training and service and denied his claim for exemption. [60] On February 19, 1953, Sicurella was ordered to report for induction on March 5, 1953. [60, 102-103] He reported on that date but refused to submit to induction. [54, 104-105, 106]

## FORM AND HISTORY OF ACTION SHOWING JURISDICTION IN DISTRICT COURT

This criminal action was brought by indictment charging petitioner with a violation of the Universal Military Training and Service Act (50 U. S. C. App. (Supp. V.) §§ 451-470). Petitioner was charged with failing and refusing to submit to induction contrary to the act. The indictment was filed on April 17, 1953. [1, 2, 5] The petitioner pleaded not guilty on June 2, 1953.

The case proceeded to trial before the judge without a jury, which was waived. [1-2, 16] At the close of all the evidence the petitioner made his motion for judgment of acquittal. [3, 11-14] The motion for judgment of acquittal was denied. [3, 15-16] On September 23, 1953, the court found the petitioner guilty and sentenced him to the custody of the Attorney General for a period of two years. [15-16] A notice of appeal was timely filed with the trial court. Statement of points was duly filed in the court below. [106-108]

## REASONS FOR GRANTING THE WRIT

### I.

Reliance upon the willingness of petitioner to use force to defend his life as basis in fact by the Court of Appeals is in direct conflict with *Annett v. United States*, 205 F. 2d 689 (10th Cir. June 26, 1953); *Taffs v. United States*, 208 F. 2d 329 (8th Cir. Dec. 7, 1953), certiorari denied 74 S. Ct. 532 (March 15, 1954); and *United States v. Pekarski*, 207 F. 2d 930 (2d Cir. Oct. 23, 1953); all holding that willingness to use force in self-defense or in defense of one's church is no basis in fact for a denial of the conscientious objector status. (See the opinion of Mr. Justice Douglas in granting bail on December 10, 1953, in *Clark v. United States*, 74 S. Ct. 357, 98 L. Ed. 171.) Because of this direct conflict on the same matter by the court below and the other courts of appeal, the Court should grant certiorari to settle the conflict.

Before concluding the discussion under this section of the discussion on the reasons for granting the writ it is important to call to the attention of the Court what the Acting Solicitor General said in his petition for writ of certiorari in *Taffs v. United States*, No. 576, October Term, 1953, at page 11:

"We do not here seek review of the holding of the court below that the expressed willingness of the registrant and other Jehovah's Witnesses to use force, even to the extent of killing, in self-defense or in defense of home, family, or associates, does not of itself exclude them from the classification of conscientious objectors. The Department of Justice in its instructions to hearing officers for conscientious objector cases has taken the same position. See Appendix B, *infra*, pp. 20-24. See *Annett v. United States*, 205 F. 2d 689 (C. A. 10). Nor do we seek review of the determination that this particular registrant was sincere in the beliefs expressed by him and a *bona fide* member of Jehovah's Witnesses."

The court below also made a decision directly in conflict with a decision rendered by it just five days before the decision was handed down in this case. That was in the case of *United States v. Close*, No. 11,085, decided on June 10, 1954. In that case the court below said:

"It is clear from the letter written by the Special Assistant of the Attorney General to the appeal board that his legal opinion that the defendant was not entitled to a conscientious objector classification was based on the belief that the defendant, as a member of Jehovah's Witnesses, was not a pacifist, was not opposed to participation in theocratic wars, and was not opposed to fighting in self-defense and, therefore, was not 'opposed to participation in war in any form,' as that phrase

is used in Section 6(j) of the Act. Many recent decisions have held that such an interpretation of this section of the Act is erroneous. *Annett v. United States*, 10 Cir., 205 F. 2d 689; *United States v. Pekarski*, 2 Cir., 207 F. 2d 930; *Taffs v. United States*, 8 Cir., 208 F. 2d 329; *United States v. Hartman*, 2 Cir., 209 F. 2d 366, 370; *Jesscn v. United States*, 10 Cir., — F. 2d — (May 7, 1954); *United States v. Hugaman*, 3 Cir., — F. 2d — (May 13, 1954). As to this contention, the court said in the *Taffs* case, *supra*, page 331: 'However, we are inclined to think that Congress did not intend such an unreasonable construction to be placed on this phrase. War, as we know it, and as the term is ordinarily used, means a flesh and blood conflict between nations; it is a struggle of violence by one political entity seeking to overcome or overthrow another political entity. Manifestly, Congress was legislating in regard to this type of conflict and was not, indeed, could not, concern itself with theocratic wars—that is, wars carried on by the immediate direction of God. The words "in any form," obviously relate, not to "war" but to "participation in" war. \* \* \*

"Since the final I-A classification of the defendant was based on this erroneous construction of the statute, the classification was invalid and did not require the defendant to submit to induction. The defendant's motion for acquittal should have been granted."

See also *United States v. Wilson*, 7th Cir., July 15, 1954, — F. 2d —.

It is submitted that there is direct conflict on the same matter by the court below and several other courts of appeals. This conflict gives a ground for the granting of certiorari here to settle the conflict. This is a substantial and

an important question of law that has not been determined but which ought to be decided by this Court.

## II.

The decision of the court below is in direct conflict with the holdings in other cases decided by other courts of appeal. In those cases the appellants, like petitioner here, were Jehovah's Witnesses. They showed the same religious belief, the same objection to service and the same religious training. While different speculations were relied upon by the Government which were discussed and rejected by the courts in those cases, the courts were also called upon to say, on facts identical to the facts in this case, whether there was basis in fact. For instance, see *Jessen* where the Tenth Circuit (after following *Taffs v. United States*, 8th Cir., Dec. 7, 1953, 208 F. 2d 329) said: "The remaining question is whether there was any basis in fact for the classification made by the State Appeal Board."

The holdings of other circuits with which the holding of the court below (that there was basis in fact for the denial of the classification) directly conflicts are: *Annett v. United States*, 10th Cir., June 26, 1953, 205 F. 2d 689; *United States v. Pekarski*, 2d Cir., Oct. 23, 1953, 207 F. 2d 930; *Taffs v. United States*, 8th Cir., Dec. 7, 1953, 208 F. 2d 329; *Jewell v. United States*, 6th Cir., Dec. 22, 1953, 208 F. 2d 770; *Schuman v. United States*, 9th Cir., Dec. 21, 1953, 208 F. 2d 801; *United States v. Hartmen*, 2d Cir., Jan. 8, 1954, 209 F. 2d 366; *Pine v. United States*, 4th Cir., April 5, 1954, 212 F. 2d 93; *Jessen v. United States*, 10th Cir., May 7, 1954, — F. 2d —; *United States v. Close*, 7th Cir., June 10, 1954, — F. 2d —. And these cases ought not to be pushed aside on the specious but factitious ground that, because the courts in some of those cases discussed the speculations urged on the courts as basis in fact, the cases are different. They are not different because on the question of whether or not there was basis in fact the evidence in each case is identical to the facts in this case and the holdings were the opposite to that

made by the court below in this case. Such attempted distinction would be a distinction without a difference. The cases above cited are identical to the facts in this case insofar as the statements in the draft board record showing conscientious objection are concerned.

It is submitted, therefore, that there is a direct conflict between the holding of the court below and the holding of other courts of appeals on this question. This gives a basis for granting the writ of certiorari.

### III.

Should this Court not find a conflict in the decision below and those of the other courts of appeals cited, petitioner says that the question is an important question of federal law that has not been, but which should be, decided by this Court.

The act deals with participation in combatant and non-combatant training and service. It is proof of willingness to do military training and service that justifies a forfeiture of the claim for classification as a conscientious objector. Self-defense is permitted under the law of God and the law of man. It is a universal right that is accorded to the individual in any government. Congress did not intend to forfeit the right to self-defense at the cost of being a conscientious objector. By force of the same reason the Congress did not intend to declare that one was willing to defend himself loses his conscientious objections to the performance of military service.

No relevance or materiality exists between conscientious objection and self-defense. There is as much difference between willingness to use force in self-defense and willingness to participate in combatant and nonecombatant military training and service as there is between day and night. Willingness to fight in self-defense, therefore, is no basis in fact for the denial of the conscientious objector status when that exemption from military service is established by other evidence in the file, as in this case.

#### IV.

The court below held that the recommendation of the Department of Justice to the appeal board is harmless in this case because it is advisory. The court overlooked the fact that the recommendation was accepted and acted upon. The appeal board followed the recommendation and denied the conscientious objector status. When it did this it made the recommendation a link in the chain. With such a defective link in the chain of administrative proceedings the entire chain is void. *United States v. Romano*, S. D. N. Y., 1952, 105 F. Supp. 597; *United States v. Everngam*, D. W. Va., 1951, 102 F. Supp. 128; *Annett v. United States*, 10th Cir., June 26, 1953, 205 F. 2d 689; *United States v. Close*, 7th Cir., June 10, 1954, — F. 2d —; *Taffs v. United States*, 8th Cir., Dec. 7, 1953, 208 F. 2d 329; *Jessen v. United States*, 10th Cir., May 7, 1954, — F. 2d —. There is, therefore, prejudicial error in the making of the recommendation by the Department of Justice to the appeal board in this case.

#### CONCLUSION

For the reasons above stated, it is respectfully submitted that this petition for a writ of certiorari should be granted.

HAYDEN C. COVINGTON

*Counsel for Petitioner*

July, 1954.

## APPENDIX A

IN THE

UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

No. 11012 OCTOBER TERM, 1953, APRIL SESSION, 1954.

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*  
v.s.  
ANTHONY TONY SICURELLA,  
*Defendant-Appellant.*

June 15, 1954.

Before MAJOR, *Chief Judge*, DUFFY and LINDLEY, *Circuit Judges*.

**LINDLEY**, *Circuit Judge*. This appeal is companion to *United States v. Robert Simmons*, No. 11011. Although the cases were combined for oral argument, separate opinions seem desirable for purposes of clarity.

The appeal is taken from a judgment of conviction of refusing to submit to induction into the armed forces in violation of 50 App. U. S. C. Sec. 462. In his questionnaire appellant stated that he was an ordained minister of Jehovah's Witnesses and a student at a ministry school operated by that sect. He asserted a right to a IV-D, minister of religion classification. This claim was ultimately denied by the selective service authorities and is not in issue before us.

In his questionnaire appellant asserted no claim to con-

scientious objector status. After denial of his ministerial claim, he filed an application for a I-O, conscientious objector classification, in which he asserted that by reason of his religious training and belief he was conscientiously opposed to participation in war in any form. He was granted a hearing on this claim by his local board, which classified him I-A. Appellant took an appeal from this classification to the state appeal board. His file was referred by the appeal board to the Department of Justice for its investigation and recommendation. An investigation was conducted by the FBI. A hearing was held before a Department hearing officer at which appellant appeared, together with a number of witnesses in his behalf. At his trial he testified that he asked the hearing officer for a summary of the adverse evidence contained in his FBI file. He quoted the hearing officer as answering, "There is no use telling you, because it is favorable." The hearing officer recommended to the Department that his claim be sustained. Because appellant had expressed a willingness to use force in defense of "Kingdom Interests", and therefore was not opposed to war in any form, the Department of Justice in its report recommended to the appeal board that his claim be denied and that he be classified I-A.

The appeal board classified him I-A and the induction order followed. Appellant admits that he refused to submit to induction when ordered to do so, but contends that the order is void, averring that there is no basis in fact for denying his conscientious objector claim and that he was denied due process of law in certain stages of the classification process to be subsequently related.

We have previously outlined the principles guiding our determination of the basis in fact question in the opinion in *United States v. Simmons*. Applying those principles, on the record before us we cannot say that the appeal board's denial of appellant's claim was without basis in fact. The question whether a belief in the use of force in

self-defense and in theocratic warfare is incompatible with a claim of conscientious objection has been considered by the courts of several circuits. In *United States v. Dal Santo*, 205 F. 2d 429, 433, cert. denied 346 U. S. 858, we expressed the view that a denial of a conscientious objector classification solely on the basis that, "believing in self-defense," a registrant "could not qualify as a conscientious objector" would, at most constitute an erroneous classification which would be final and not subject to correction by judicial review. In *Annett v. United States*, 205 F. 2d 689, the Court of Appeals for the Tenth Circuit, one judge dissenting, held void a classification denying Annett's claim to conscientious objector status which the court found was based solely on the defendant's expressed belief in the use of force in self-defense. This decision has been followed in *United States v. Taffs*, 208 F. 2d 329, cert. denied 347 U. S. 928 (C. A. 8); *United States v. Hartman*, 209 F. 2d 366 (C. A. 2); and *United States v. Pekarski*, 207 F. 2d 930 (C. A. 2).

In view of the most recent pronouncement by the Supreme Court in *Dickinson v. United States*, 346 U. S. 389, 396, that courts may not apply "a test of 'substantial evidence'" to this type of case, it would appear that the cases last cited rest on an incorrect theory of the scope of judicial review, thus rendering their authoritative value speculative. The majority of the court in the *Annett* case treated the expression of belief in the use of force for limited purposes as evidentiary but reversed Annett's conviction because of a "lack of any substantial evidence" to support the board's denial of his conscientious objector claim. The court in the *Pekarski* case reiterated this test in holding a classification order void because supported by "no substantial evidence." The courts in the *Hartman* and *Taffs* cases based their decisions solely on the basis of the majority opinion in *Annett* without the benefit of any discussion of the merits of that decision.

We think that this court, speaking through Judge Duffy, expressed the correct view in the *Dal Santo* case. Whether or not appellant's willingness to use force in defense of "Kingdom Interests" is incompatible with a claim of conscientious objection to participation in war, his statement is an appropriate factor for the board to consider when ruling on his claim as bearing on the question whether he has brought himself within the statutory privilege. Furthermore, this circumstance does not stand alone in the record before us. Statements made by appellant in his SSS Form 150 express an objection to any and all obedience to secular authority. Thus he stated that he is "no part of this world which is governed by political systems," that he conscientiously objects "to serving in any military establishment or any civilian arrangement that substitutes for military service" and that he "cannot desert the forces of Jehovah to assume the obligations of a soldier of this world without being guilty of desertion."

Two things are apparent on the face of these statements, i.e., that appellant sets himself separate and apart from all other persons as immune from the constitutional dictates of the national government and that he is asserting a claim of exemption extending to both military and civilian service under the Act, a claim which goes beyond the statutory exemption. 50 App. U. S. C. Sec. 456 (j). These claims are consistent only with objections to any command of governmental authority, but do not *per se* establish that deep-seated conscientious belief which would entitle appellant to the claimed exemption. On this basis the board could conclude that appellant had not proved himself within the terms of the statutory privilege. Only the boards, local and appellate, are empowered to make that determination. We cannot say that the order here challenged is without a basis in fact.

Equally wanting in merit is appellant's contention that the order is tainted by fatal error on the part of the Department of Justice and therefore void. This contention is

twofold, viz., that the Department erred in rejecting the hearing officer's recommendation that appellant's claim be allowed and that the recommendation to the appeal board was based on an erroneous ground that a belief in the use of force under certain circumstances is incompatible with a claim of conscientious objection to war. Suffice it to state as to the former that the hearing officer's report is merely advisory and only one of the factors considered by the Department in framing its recommendation to the board. As to the latter, if we assume that the Department's recommendation to the appeal board was based on an erroneous ground, that report is advisory only and was, as we have previously indicated, predicated on an evidentiary factor competent for consideration by the appeal board, the body charged by the Act with the duty to make the determinative judgment on each appealing registrant's claim. 50 App. U. S. C. Sec. 456 (j); *United States v. Nugent*, 346 U. S. 1, 9.

For the reasons stated in *United States v. Simmons*, appellant's principal contentions must also fail. As did Simmons, appellant contended below that he was entitled as a matter of right to a full summary of the adverse evidence in his FBI file at the time of his Justice Department hearing and that, therefore, the file must be produced at his trial to enable the court to determine whether he was given this requisite summary. To this end he procured the issuance of a subpoena *duces tecum* to compel the production of the file at his trial. On the government's motion, the court below quashed the subpoena. This action is assigned as error. In view of what was said in the *Simmons* case, it is sufficient to state that no prejudice to appellant is shown on the face of the record.

Appellant testified that he was told by the hearing officer that the FBI report was favorable to his claim. The report of the Department of Justice to the appeal board states that the evidence in the file is favorable and that the Department placed no credence in an adverse

opinion by one person questioned by the FBI "who could offer no facts to substantiate" this opinion. The file was never before the appeal board; nothing before that body indicated that any adverse evidence was contained in it. This situation is essentially similar to that which the Supreme Court recited as refuting an alleged denial of the right to be advised of evidence adverse to the registrant's claim in *United States v. Packer (United States v. Nugent)*, 346 U. S., at page 7, n. 10. Appellant could not have been prejudiced by adverse evidence, if any, contained in the secret file. That file was irrelevant to any issue before the court below and the court properly quashed the subpoena.

On the record before us we cannot say that the denial of appellant's claim was without basis in fact or that appellant was denied due process of law in any stage of the administrative process. The judgment is affirmed.

## APPENDIX B

### STATUTES AND REGULATIONS INVOLVED

Section 1(c) of the Universal Military Training and Service Act (50 U. S. C. App. (Supp. V) § 451(c)) provides:

"The Congress further declares that in a free society the obligations and privileges of serving in the armed forces and the reserve components thereof should be shared generally, in accordance with a system of selection which is fair and just, and which is consistent with the maintenance of an effective national economy."—June 24, 1948, ch. 625, title I, § 1, 62 Stat. 604, amended June 19, 1951, ch. 144, title I, § 1(a) 65 Stat. 75.

Section 6(j) of the act (50 U. S. C. App. (Supp. V) § 456(j), 65 Stat. 75, 83, 86) provides:

"Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by

reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces under this title, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such non-combatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 12 of this title, to have knowingly failed or neglected to perform a duty required of him under this title. Any person claiming exemption from combatant training and service because of such conscientious objections shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board. Upon the filing of such appeal, the appeal board shall refer any such claim to the Department of Justice for inquiry and hearing. The Department of Justice, after appropriate inquiry, shall hold a hearing with respect to the character and good faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The Department of Justice shall, after such hearing if the objections are found to be sustained, recommend to the appeal board that (1) if the objector is inducted into the armed

forces under this title, he shall be assigned to noncombatant service as defined by the President, or (2) if the objector is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 12 of this title, to have knowingly failed or neglected to perform a duty required of him under this title. If after such hearing the Department of Justice finds that his objections are not sustained, it shall recommend to the appeal board that such objections be not sustained. The appeal board shall, in making its decision, give consideration to, but shall not be bound to follow, the recommendation of the Department of Justice together with the record on appeal from the local board. Each person whose claim for exemption from combatant training and service because of conscientious objections is sustained shall be listed by the local board on a register of conscientious objectors."

—50 U. S. C. App. (Supp. V) § 456(j), 65 Stat. 75, 83, 86.

Section 12(a) of the act (50 U. S. C. App. (Supp. B) § 462(a)) provides:

"... Any . . . person . . . who . . . refuses . . . service in the armed forces . . . or who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title, or rules, regulations, or directions made pursuant to this title . . . shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than \$10,000, or by both such fine and imprisonment . . ."

Section 1622.14 of the Selective Service Regulations (32 C. F. R. § 1622.14 (1951 Rev.)) provides:

*"Conscientious objector available for civilian work contributing to the maintenance of the national health, safety, or interest.* (a) In Class I-O shall be placed every registrant who would have been classified in Class I-A but for the fact that he has been found, by reason of religious training and belief, to be conscientiously opposed to both combatant and noncombatant training and service in the armed forces."

Section 1626.25 of the Selective Service Regulations (32 C. F. R. § 1626.25 (1951 Rev.)) provides:

*"Special Provisions When Appeal Involves Claim That Registrant Is a Conscientious Objector.*—(a) If an appeal involves the question whether or not a registrant is entitled to be sustained in his claim that he is a conscientious objector, the appeal board shall take the following action:

"(1) If the registrant has claimed, by reason of religious training and belief, to be conscientiously opposed to participation in war in any form and by virtue thereof to be conscientiously opposed to combatant training and service in the armed forces, but not conscientiously opposed to noncombatant training and service in the armed forces, the appeal board shall first determine whether or not such registrant is eligible for classification in a class lower than Class I-A-O. If the appeal board determines that such registrant is eligible for classification in a class lower than I-A-O, it shall classify the registrant in that class. If the appeal board determines that such registrant is not eligible for classification in a class lower than Class I-A-O, but is eligible for classification in Class I-A-O, it shall classify the registrant in that class.

"(2) If the appeal board determines that such registrant is not eligible for classification in either a class lower than Class I-A-O or in Class I-A-O, the appeal board shall transmit the entire file to the United States Attorney for the judicial district in which the office of the appeal board

is located for the purpose of securing an advisory recommendation from the Department of Justice.

"(3) If the registrant claims that he is, by reason of religious training and belief, conscientiously opposed to participation in war in any form and to be conscientiously opposed to participation in both combatant and noncombatant training and service in the armed forces, the appeal board shall first determine whether or not the registrant is eligible for classification in a class lower than Class I-O. If the appeal board finds that the registrant is not eligible for classification in a class lower than Class I-O, but does find that the registrant is eligible for classification in Class I-O, it shall place him in that class.

"(4) If the appeal board determines that such registrant is not entitled to classification in either a class lower than Class I-O or in Class I-O, it shall transmit the entire file to the United States Attorney for the judicial district in which the office of the appeal board is located for the purpose of securing an advisory recommendation from the Department of Justice.

"(b) No registrant's file shall be forwarded to the United States Attorney by any appeal board and any file so forwarded shall be returned, unless in the 'Minutes of Action by Local Board and Appeal Board' on the Classification Questionnaire (SSS Form No. 100) the record shows and the letter of transmittal states that the appeal board reviewed the file and determined that the registrant should not be classified in either Class I-A-O or Class I-O under the circumstances set forth in subparagraphs (2) or (4) of paragraph (a) of this section.

"(e) The Department of Justice shall thereupon make an inquiry and hold a hearing on the character and good faith of the conscientious objections of the registrant. The registrant shall be notified of the time and place of such hearing and shall have an opportunity to be heard. If the objections of the registrant are found to be sustained, the Department of Justice shall recommend to the appeal board

(1) that if the registrant is inducted into the armed forces, he shall be assigned to noncombatant service, or (2) that if the registrant is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of induction be ordered by his local board to perform for a period of twenty-four consecutive months civilian work contributing to the maintenance of the national health, safety, or interest. If the Department of Justice finds that the objections of the registrant are not sustained, it shall recommend to the appeal board that such objections be not sustained.

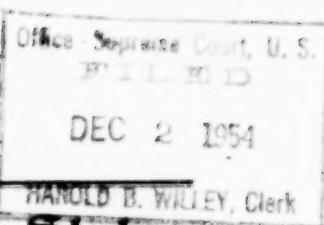
“(d) Upon receipt of the report of the Department of Justice, the appeal board shall determine the classification of the registrant, and in its determination it shall give consideration to, but it shall not be bound to follow, the recommendation of the Department of Justice. The appeal board shall place in the Cover Sheet (SSS Form No. 101) of the registrant both the letter containing the recommendation of the Department of Justice and the report of the Hearing Officer of the Department of Justice.”

Section 1626.26 of the Selective Service Regulations (32 C. F. R. § 1626.26 (1951 Rev.)) provides:

*“Decision of Appeal Board.*—(a) The appeal board shall classify the registrant, giving consideration to the various classes in the same manner in which the local board gives consideration thereto when it classifies a registrant, except that an appeal board may not place a registrant in Class IV-F because of physical or mental disability unless the registrant has been found by the local board or the armed forces to be disqualified for any military service because of physical or mental disability.

“(b) Such classification of the registrant shall be final, except where an appeal to the President is taken; provided, that this shall not be construed as prohibiting a local board from changing the classification of a registrant in a proper case under the provisions of part 1625 of this chapter.”

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Supreme Court of the United States

OCTOBER TERM, 1954

No. 250

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ANTHONY TONY SICURELLA,  
*Petitioner*

v.

UNITED STATES OF AMERICA,  
*Respondent*

---

ON PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

---

BRIEF FOR PETITIONER

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# Supreme Court of the United States

OCTOBER TERM, 1954

No. 250

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ANTHONY TONY SICURELLA,

*Petitioner*

v.

UNITED STATES OF AMERICA,

*Respondent*

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ON PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

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## BRIEF FOR PETITIONER

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### OPINION BELOW

The opinion of the Court of Appeals is reported. (*United States v. Sicurella*, 7th Cir., 1954, 213 F. 2d 911). It is printed in the record. [R. 110-115] The opinion of the Court of Appeals in the companion case of *United States v. Simmons*, 7th Cir., 1954, 213 F. 2d 901, referred to in the opinion in this case by the Court of Appeals, is printed in the record at pages 77-92, in No. 251, October Term, 1954, a companion case to this one, styled *Simmons v. United States*.

## JURISDICTION

The judgment of the Court of Appeals was entered on June 15, 1954. The time for filing petition for writ of certiorari was extended to August 14, 1954. The petition was filed within the extended time. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).—See also Rules 37(b)(2) and 45(a), Federal Rules of Criminal Procedure.

## STATUTES AND REGULATIONS INVOLVED

Section 1(e) of the Universal Military Training and Service Act (50 U. S. C. App. § 451(e)) provides:

"The Congress further declares that in a free society the obligations and privileges of serving in the armed forces and the reserve components thereof should be shared generally, in accordance with a system of selection which is fair and just, and which is consistent with the maintenance of an effective national economy."—June 24, 1948, ch. 625, title I, § 1, 62 Stat. 604, amended June 19, 1951, ch. 144, title I, § 1(a) 65 Stat. 75.

Section 6(j) of the act (50 U. S. C. App. § 456(j), 65 Stat. 75, 83, 86) provides:

"Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces under this title, be assigned to noncombatant

service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such non-combatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 12 of this title, to have knowingly failed or neglected to perform a duty required of him under this title. Any person claiming exemption from combatant training and service because of such conscientious objections shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board. Upon the filing of such appeal, the appeal board shall refer any such claim to the Department of Justice for inquiry and hearing. The Department of Justice, after appropriate inquiry, shall hold a hearing with respect to the character and good faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The Department of Justice shall, after such hearing, if the objections are found to be sustained, recommend to the appeal board that (1) if the objector is inducted into the armed forces under this title, he shall be assigned to noncombatant service as defined by the President, or (2) if the objector is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 12 of this title, to have knowingly failed or

neglected to perform a duty required of him under this title. If after such hearing the Department of Justice finds that his objections are not sustained, it shall recommend to the appeal board that such objections be not sustained. The appeal board shall, in making its decision, give consideration to, but shall not be bound to follow, the recommendation of the Department of Justice together with the record on appeal from the local board. Each person whose claim for exemption from combatant training and service because of conscientious objections is sustained shall be listed by the local board on a register of conscientious objectors."

—50 U. S. C. App. § 456(j), 65 Stat. 75, 83, 86.

Section 12(a) of the act (50 U. S. C. App. § 462(a), 62 Stat. 622 )provides:

"... Any . . . person . . . who . . . refuses . . . service in the armed forces . . . or who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title, or rules, regulations, or directions made pursuant to this title . . . shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than \$10,000, or by both such fine and imprisonment . . ."

Section 1622.14 of the Selective Service Regulations (32 C. F. R. §1622.14 (as amended by E. O. 10420, 17 F. R. 11593, Dec. 19, 1952)) provides:

*"Class I-O: Conscientious objector available for civilian work contributing to the maintenance of the national health, safety, or interest.—(a) In Class I-O shall be placed every registrant who would have been classified in Class I-A but for the fact that he has been found, by reason of religious training and belief, to be conscientiously opposed to participation in war in any form and to be conscientiously opposed to participation in both combatant and noncombatant training and service in the armed forces."*

Section 1626.25 of the Selective Service Regulations (32 C. F. R. § 1626.25 (E. O. 10363, 17 F. R. 5456, June 18, 1952)) provides:

*"Special provisions when appeal involves claim that registrant is a conscientious objector.—(a) If an appeal involves the question whether or not a registrant is entitled to be sustained in his claim that he is a conscientious objector, the appeal board shall take the following action:*

"(1) If the registrant has claimed, by reason of religious training and belief, to be conscientiously opposed to participation in war in any form and by virtue thereof to be conscientiously opposed to participation in combatant training and service in the armed forces, but not conscientiously opposed to participation in noncombatant training and service in the armed forces, and the local board has classified the registrant in Class I-A-O, the appeal board shall proceed with the classification of the registrant. If, in such a case, the local board has classified the registrant in any class other than Class I-A-O, the appeal board shall transmit the entire file to the United States Attorney for the Federal judicial district in which the appeal board has jurisdiction for the purpose of securing an advisory recommendation from the Department of Justice.

"(2) If the registrant has claimed, by reason of religious training and belief, to be conscientiously opposed to participation in war in any form and by virtue thereof to be conscientiously opposed to participation in both combatant and noncombatant training and service in the armed forces, and the local board has classified the registrant in Class I-O, the appeal board shall proceed with the classification of the registrant. If, in such a case, the local board has classified the registrant in any class other than Class I-O, the appeal board shall transmit the entire file to the United States Attorney for the Federal judicial district in which the appeal board has jurisdiction for the purpose of securing an advisory recommendation from the Department of Justice.

"(b) Whenever a registrant's file is forwarded to the United States Attorney in accordance with paragraph (a) of this section, the Department of Justice shall thereupon make an inquiry and hold a hearing on the character and good faith of the conscientious objections of the registrant. The registrant shall be notified of the time and place of such hearing and shall have an opportunity to be heard. If the objections of the registrant are found to be sustained, the Department of Justice shall recommend to the appeal board (1) that if the registrant is inducted into the armed forces, he shall be assigned to noncombatant service, or (2) that if the registrant is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of induction be ordered by his local board to perform for a period of twenty-four consecutive months civilian work contributing to the maintenance of the national health, safety, or interest. If the Department of Justice finds that the objections of the registrant are not sustained, it shall recommend to the appeal board that such objections be not sustained.

"(c) Upon receipt of the report of the Department of Justice, the appeal board shall determine the classification of the registrant, and in its determination it shall give consideration to, but it shall not be bound to follow, the recommendation of the Department of Justice. The appeal board shall place in the Cover Sheet (SSS Form No. 101) of the registrant the letter containing the recommendation of the Department of Justice."

Section 1626.26 of the Selective Service Regulations (32 C. F. R. § 1626.26 '1951 Rev.)) provides:

*Decision of appeal board.*—(a) The appeal board shall classify the registrant, giving consideration to the various classes in the same manner in which the local board gives consideration thereto when it classifies a registrant, except that an appeal board may not place a registrant in Class IV-F because of physical or mental disability unless the registrant has been found by the local board or the armed

forces to be disqualified for any military service because of physical or mental disability.

"(b) Such classification of the registrant shall be final, except where an appeal to the President is taken; *provided*, that this shall not be construed as prohibiting a local board from changing the classification of a registrant in a proper case under the provisions of part 1625 of this chapter."

## **QUESTIONS PRESENTED**

### **I.**

Whether the denial by the appeal board of the claim for classification of petitioner as a conscientious objector was without basis in fact and, consequently, the final I-A classification was arbitrary and capricious.

### **II.**

Whether the act and the regulations permit the Department of Justice to recommend to the appeal board to deny and whether the appeal board may deny the conscientious objector status because the petitioner, an objector to direct participation in the armed forces, is willing to defend himself and his brothers by the use of force.

## **STATEMENT OF THE CASE**

This criminal action was brought by indictment charging petitioner with a violation of the Universal Military Training and Service Act (50 U. S. C. App. §§ 451-470). Petitioner was charged with failing and refusing to submit to induction, contrary to the act. The indictment was filed on April 17, 1953. [R. 1, 2, 5] The petitioner pleaded not guilty on June 2, 1953.

The case proceeded to trial before the Judge without a jury, which was waived. [R. 1-2, 16] At the close of all the evidence the petitioner made his motion for judgment of acquittal. [R. 3, 11-14] The motion for judgment of acquittal was denied. [R. 3, 15-16] On September 23, 1953, the court

found the petitioner guilty and sentenced him to the custody of the Attorney General for a period of two years. [R. 15-16] A notice of appeal was timely filed with the trial court. Statement of points was duly filed in the court below. [R. 106-108] The court below affirmed. [R. 115]

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Petitioner was born on June 13, 1927. [R. 51, 53] He registered with his local board on September 11, 1948. [R. 52, 53] The local board mailed to him the classification questionnaire. [R. 54-55] On January 15, 1945, Sicurella returned his questionnaire properly filled out and filed it with the local board. He identified himself by giving his name and address. He then showed that he was a minister of religion. He answered that he regularly served as such. He then said that he had been a minister of Jehovah's Witnesses since 1934. He added that he was formally ordained in January of 1944, in Chicago. [R. 55-56]

He answered that he was a student preparing for the ministry also. [R. 56] In his testimony at the trial he explained that while he was a minister he continued to attend school and study Bible courses so that he could keep up to date. He said this was the reason he answered that he was a student of the ministry. [R. 43]

In the questionnaire Sicurella also showed that he was a clerk for the Railway Express Agency. [R. 56-57] He showed that he worked 44 hours per week in this job. [R. 56-57]

Sicurella showed that he had attended eight years of elementary school. He also attended two years of junior high school and two years of high school, having graduated. [R. 57] Sicurella failed to sign the conscientious objector blank appearing in the questionnaire. [R. 57] At the trial he explained to the court the reason he had failed to sign the conscientious objector blank. He said that he thought that according to law he had to "claim either IV-D or I-O,

so I claimed the more important one to me, of IV-D." [R. 19]

In the conclusion of his classification questionnaire Sieurella claimed classification in Class IV-D, the minister's exemption provided for in the regulations. [R. 58] The local board, on March 1, 1949, recognized his claim for exemption as a minister of religion. The board placed him in Class IV-D. [R. 58] He was notified of this. [R. 58]

On September 20, 1950, the local board notified Sieurella to appear for hearing on September 26, 1950. The memorandum made by the local board on the date he was notified shows that the board wrote to State Headquarters "for law on the Jehovah's Witnesses before the board will act." [R. 58] On October 9, 1950, the local board placed Sieurella in Class I-A. [R. 58] He was notified of this. [R. 58] Sieurella requested a personal appearance on October 16, 1950. [R. 62-63] On the same date he also filed with the local board affidavits and certificates showing that he was pursuing the ministry and that as a basis for his ministerial activity he was entitled to the exemption. [R. 60-62]

On October 17, 1950, Sieurella called the board about the hearing. The local board then, on November 3, 1950, notified him to appear before it with evidence on November 8. [R. 59] On November 8, 1950, Sieurella filed with the local board a list of scriptures showing that he had conscientious objections to war. He also filed petitions and certificates as to his ministerial status. [R. 64-65] On November 8, 1950, the local board classified Sieurella in Class I-A. This made him liable for unlimited military training and service. [R. 59] He was notified of this classification. [R. 59]

Sieurella wrote the board a letter of appeal on November 11, 1953. In this letter of appeal he requested another personal appearance. [R. 66] The local board answered him. They told him he was not entitled to another personal appearance. [R. 67] The board then notified him to report for preinduction physical examination on November 27, 1950. [R. 67-68] He was declared to be physically acceptable for

training and service. [R. 59, 60] He was notified of his acceptability by the local board on December 8, 1950. [R. 59, 70]

On December 10, 1950, Sicurella filed with the local board a letter showing his Scriptural argument and basis for his conscientious objections to combatant and noncombatant military service. [R. 69-70]

On January 17, 1951, the appeal board classed Sicurella for unlimited military training and service in the armed forces. He was placed in Class I-A. [R. 59] The file was returned to the local board and he was notified of this classification. [R. 59] On January 26, 1951, Sicurella requested a personal appearance. He again stated that he was a conscientious objector. [R. 72, 73, 74]

On January 31, 1951, the local board wrote Sicurella and told him that there would be no personal appearance granted to him. [R. 74] On February 5, 1951, Sicurella notified the local board that he was appealing to General Hershey for relief against the actions taken by the board. [R. 75]

On February 9, 1951, Sicurella filed with the local board a conscientious objector form that he had requested on February 5, 1951. [R. 59, 76] In the conscientious objector form he signed Series I(B). In this he certified that he was conscientiously opposed to both combatant and noncombatant military service. [R. 76] Sicurella showed he believed in the Supreme Being. [R. 76] He described the nature of his beliefs as a conscientious objector. He showed that he was in the army of Christ Jesus. He emphasized that the weapons of his warfare were spiritual and not carnal. He told the board that he believed in rendering unto Caesar the things that are Caesar's. He added, however, that he did not believe in rendering unto Caesar the things that belonged to God. [R. 76-77, 81-82] Sicurella showed the local board that he got his conscientious objections from a deep and serious study of the Bible. [R. 77]

Sicurella answered that he relied on the Bible and the Watchtower Bible and Tract Society for religious guidance

and instruction. [R. 77] In answer to the question as to whether he believed in the use of force he stated that he believed in using force only to the extent of defending the Kingdom interests. This included self-defense and the defense of his brothers. He certified that he did not use weapons and if necessary he would retreat when attacked, in order to avoid trouble. [R. 77-82]

Sicurella stated that the behavior and the conduct of his life that consistently demonstrated the depth of his conviction was that he had been preaching the gospel of Jehovah's Witnesses since he was six years old. He indicated that he preached publicly and from house to house. He otherwise showed that he had pursued a consistent course of action as one of Jehovah's Witnesses since childhood. [R. 77-78]

Sicurella showed that he had publicly expressed his stand as a Christian minister and as a conscientious objector when he was baptized. He indicated that from the Bible he believed that the kingdom of Almighty God was not of this world. He showed that he must maintain strict neutrality and that he had expressed himself on this view. [R. 78, 82]

Sicurella then listed the schools he had attended, the jobs at which he had been employed, and the addresses of the places where he had lived. [R. 78-79] He showed that his parents were Jehovah's Witnesses. [R. 79] He answered that he had never been a part of any military organization. [R. 79]

Sicurella showed that he was a member of a religious organization. He showed that this was Jehovah's Witnesses and that the legal governing body of that group was the Watchtower Bible and Tract Society. He answered that he had been brought up in the faith of Jehovah's Witnesses. He showed the address of his church and named the presiding minister. [R. 80] He described the creed of Jehovah's Witnesses in opposition to participation in war. He showed that they believed that the kingdom of Almighty God was not of this world. He certified that they were neutral to

the conflicts of this world. [R. 80] He said that he was an ordained minister of religion, preaching the gospel of God's kingdom. [R. 80]

Sicurella concluded his conscientious objector form by giving references to persons who would vouch for his sincerity. He then signed the form. [R. 80-81]

When the conscientious objector form was filed with the local board the local board did not reopen his case and reconsider it, as required by law. On February 16, 1951, the board forwarded the file to the State Director for his review. [R. 59] On February 21, 1951, the State Director wrote the local board that it should reopen and reconsider his case. He also informed the board that it would be necessary to consider the claim of Sicurella as a minister of religion and as a conscientious objector. [R. 83-84]

On reopening and reconsidering his case the local board classed Sicurella in Class IV-D. This exempted him for the second time as a minister of religion. This was on March 12, 1951. [R. 59] He was notified of this classification. [R. 59]

Sicurella stayed in this exempt status until March, 1952. On March 10, 1952, the local board forwarded his file to the State Headquarters for review. [R. 59, 84-85] The State Headquarters reviewed his file and advised the board that in the opinion of the State Director Sicurella did not qualify for the ministerial exemption or Class IV-D. [R. 85-86] Then on March 17 the local board classified him in Class I-A, and he was later notified of this classification. [R. 59]

On March 24 Sicurella wrote a letter to the local board requesting a personal appearance. [R. 59, 86-87] The local board then notified him to appear before it on April 7. [R. 59, 87] On April 7, following personal appearance, the local board classified Sicurella again as liable for unlimited military service. He was placed in Class I-A. He was then notified of this classification. [R. 59]

Sicurella then took an appeal to the appeal board on April 18, 1952. [R. 59, 88-89] On that date his file was forwarded to the appeal board. [R. 59, 89] The appeal board

then placed Sieurella in Class I-A on May 21, 1952. [R. 59, 90] The file was returned to the local board and Sieurella was notified of the I-A classification by the appeal board on May 23, 1952. [R. 59]

The State Director was written a letter dated May 31, 1952, by Sieurella. He complained of the action by the appeal board. He charged that he had been illegally dealt with by the boards. [R. 90-91] The State Director wrote Sieurella that it was up to the local board to classify him. [R. 92] The file was called in to State Headquarters, however, by the State Director for study and review. [R. 60, 93-94]

The State Director then wrote a letter to the local board calling attention to the fact that Sieurella's procedural rights on personal appearance had been violated by the board. [R. 94-95]

The local board wrote Sieurella to appear before it on July 14, 1952. [R. 60, 95-96] Sieurella appeared before the local board on July 14. [R. 60] The personal appearance was very summary in nature. It was brief. Very few questions were asked. An extremely short memorandum of the personal appearance was made by the local board. The testimony showed that one of the board members stated to Sieurella that they knew he was a minister of religion but that they were not able to classify him as a minister because it was over their head. Apparently the board member was referring to the earlier letter from the State Director giving the opinion that Sieurella was not entitled to the minister's exemption. [R. 24]

The trial court excluded testimony offered by the petitioner to show prejudice of the board members against Jehovah's Witnesses and a denial of the claim for exemption by determining on a class basis that Jehovah's Witnesses are not ministers rather than considering *de novo* the particular claim of Sieurella. Offers of proof were made showing what the testimony would have been had it been admitted. [R. 22-23, 46-47, 49-50]

The memorandum made by the local board following the personal appearance merely showed that Sicurella was ordained in February of 1943 by his congregation. It stated that he held services in the church twice a month and referred to the basis for the claim for classification as a minister of religion. [R. 96]

The local board, following the personal appearance on July 14, 1952, classified Sicurella in Class I-A. It notified him of the classification. [R. 60] Then on July 21, 1952, Sicurella appealed his classification. [R. 97] There was an FBI investigation on his claim for classification as a conscientious objector. This investigation preceded a hearing in the Department of Justice before the hearing officer. The hearing officer notified Sicurella to appear before him on January 13, 1953, for a hearing. [R. 26] Sicurella appeared for the hearing as notified by the officer. [R. 26] He brought along with him to the hearing twelve witnesses to vouch for his sincerity and good faith in making his claim for classification as a conscientious objector. [R. 26]

At the personal appearance before the hearing officer Sicurella asked the hearing officer for the FBI report. The hearing officer said that there was no use in showing it to him, because it was favorable to Sicurella. [R. 26] Sicurella then asked the hearing officer, Roy West, to please give him a summary of the unfavorable evidence in the FBI report. The hearing officer then replied: "There is no use in telling you because it was favorable." [R. 26] At the close of the hearing Hearing Officer West told Sicurella that he believed he was a sincere conscientious objector. He stated that he would recommend favorably to the Department of Justice and suggest that Sicurella be classified as a conscientious objector. [R. 27]

The file and the report of the hearing officer were sent in to the Department of Justice at Washington. The Assistant Attorney General reviewed the case and the report of the hearing officer. [R. 99-101] The Assistant Attorney General, after stating the history of Sicurella's case, referred to the

recommendation of the hearing officer. He said that the hearing officer was convinced that Sicurella was sincere and that his conscientious objections were based on religious training and belief. He stated that the hearing officer recommended the conscientious objector classification to be given to Sicurella. [R. 100-101]

The Assistant Attorney General did not follow the recommendation of the hearing officer. He did not reject the report of the hearing officer because Sicurella was not sincere. The Assistant Attorney General recognized that Sicurella was sincere. He recommended against Sicurella because he "failed to establish that he is opposed to war in any form." The Assistant Attorney General noted that Sicurella would defend himself, his ministry and his fellow brothers. The Assistant Attorney General held that because Sicurella would exercise his legal and Biblical right of self-defense he was not entitled to the conscientious objector exemption "within the meaning of the act." [R. 101] The Assistant Attorney General then recommended to the appeal board that the claim for classification as a conscientious objector "be not sustained." [R. 101]

On February 10, 1953, the appeal board classified Sicurella in Class I-A. [R. 101-102] The file was returned to the local board and Sicurella was notified of the classification that made him liable for military training and service and denied his claim for exemption. [R. 60] On February 19, 1953, Sicurella was ordered to report for induction on March 5, 1953. [R. 60, 102-103] He reported on that date but refused to submit to induction. [R. 54, 104-105, 106]

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The documentary evidence showed that Sicurella was conscientiously opposed to both combatant and noncombatant military service. [R. 76-83, 99-101]

Under ground 8 of the motion for judgment of acquittal the petitioner complained of the denial of the conscientious

objector status as being without basis in fact. [R. 12] The motion for judgment of acquittal was denied. [R. 3, 15-16] The Court of Appeals held that there was basis in fact for the denial of the conscientious objector status. [R. 115]

The Department of Justice recommended to the appeal board that Sieurella be denied the conscientious objector status because he was willing to fight in self-defense. [R. 99-100, 101] In accordance with that recommendation the appeal board rejected the conscientious objector claim. It classified petitioner I-A. [R. 101-102]

Under ground 9 of the motion for judgment of acquittal it was contended that the recommendation was irrelevant and illegal. [R. 12] The motion for judgment of acquittal was denied. [R. 3, 15-16] The Court of Appeals held that the recommendation was not illegal. [R. 113-114]

## SUMMARY OF ARGUMENT

### ONE

**The final denial of the conscientious objector status by the appeal board was without basis in fact; consequently, the final I-A classification by the board is arbitrary, capricious and contrary to law.**

Petitioner brought himself squarely within Section 6(j) of the act and Section 1622.14 of the Selective Service Regulations. *Dickinson v. United States*, 346 U. S. 389, 396-397, 399 (1953), required that the board ". . . must find and record affirmative evidence that he has misrepresented his case." The documentary evidence submitted by petitioner was undisputed and showed that he was a conscientious objector to the performance of both combatant and noncombatant military service.

At no time did any board member of the Selective Service System or the hearing officer of the Department of Justice challenge the veracity or the sincerity of petitioner. All found him to be sincere. No question of fact was raised by

any governmental agent in this case while it was in the Selective Service System. The absence of contradictory evidence or impeachment of the petitioner makes necessary the application of the rule of *Dickinson v. United States, supra*.—*Weaver v. United States*, 8th Cir., 1954, 210 F. 2d 815, 822-823; *Taffs v. United States*, 8th Cir., 1953, 208 F. 2d 329, 331-332; *United States v. Hartman*, 2d Cir., 1954, 209 F. 2d 366, 368, 369-370; *Pine v. United States*, 4th Cir., 1954, 212 F. 2d 93, 96; *Jewell v. United States*, 6th Cir., 1953, 208 F. 2d 770, 771-772; *Jessen v. United States*, 10th Cir., 1954, 212 F. 2d 897, 900; *United States v. Wilson*, 7th Cir., 1954, 215 F. 2d 443, 446.

The above decisions cannot be distinguished. The answers given by the appellants in those cases are the same as the answers made by the petitioner in this case. Certain speculations were urged by the Government as basis in fact in those cases. These were discussed. The discussion of such speculations does not distinguish those cases. The factual situation and the holding of the courts (that there was no basis in fact) make the cases directly in point here. They are applicable and cannot be set aside.

Petitioner had been one of Jehovah's Witnesses and possessed conscientious objections for years before he was finally classified. He filed his conscientious objector claim late. He had reasons for the late filing of his claim. The board permitted it. It considered the conscientious objector form even though it was filed late. The late filing of the form cannot be raised in this Court as basis in fact, since the Selective Service System did not rely upon the point.

The Selective Service System provides for the making of the conscientious objector claim even without the filing of the form. See Local Board Memorandum No. 41, November 30, 1951, amended August 15, 1952. The state director ordered the local board to reopen petitioner's case because of such filing of the conscientious objector form. There cannot be a waiver of the claim because of the late filing of the form. Unless the Selective Service System bars petitioner

from filing the form it is beyond the competency of the Government to urge for the first time that the form was filed late. In any event the late filing of the form cannot be basis in fact. The facts are undisputed notwithstanding the fact that the form was filed late. There was, therefore, no basis in fact for the denial of the claim because of the late filing of the form. It was not considered by the Selective Service System as basis in fact and the undisputed evidence otherwise established that petitioner was exempt from military training and service.

Omissions in the answers appearing in the conscientious objector form cannot be relied upon as basis in fact. Registrants are not to be treated as though they were litigants represented by counsel. (*Berman v. Craig*, 3rd Cir., 1953, 207 F. 2d 888, 891) Section 1626.13 and Section 1626.24 of the regulations provide for the procedure to be followed in the event the forms are incomplete. Failure of the boards to resort to these regulations gives the Government no basis to argue that the failure to fill out the form completely and in every respect is basis in fact for the denial of the conscientious objector status. The Department of Justice found that Sieurella was sincere. The hearing officer specifically declared him to be sincere. The Assistant Attorney General did not contradict this finding. The Department of Justice merely recommended that because of the belief in self-defense the conscientious objector status should be denied. This recommendation was not a contradiction of the undisputed evidence. It did not constitute a challenge to the sincerity of Sieurella.

The refusal of Sieurella to perform civilian work because he claimed exemption as a minister, while it may be a defiance of "all secular authority," does not constitute basis in fact for the denial of the conscientious objector status. The Department of Justice did not rely upon this position in its recommendation. The holding of the court below, based upon the refusal of Sieurella to do civilian work, is speculation that flies in the teeth of *Dickinson v.*

*United States*, 346 U. S. 389 (1953). It is guesswork to the extreme that the board denied the conscientious objector status because of this position of Sicurella.

The court below, in holding that the refusal to perform civilian work was a basis in fact for the denial of the conscientious objector status, ignores the separation of authority between the draft boards and the courts. The draft boards are to classify; they may not penalize. It is for the district courts to punish for violations of the act. A mere statement of refusal to comply with the order is not basis in fact for the denial of the conscientious objector status.

Draft boards must properly classify according to the facts. They must then order a conscientious objector to do civilian work. If, as and when the conscientious objector refuses to do work when properly ordered he may be prosecuted. His statement, in advance of an order commanding him to perform civilian work, that he will not perform the work, being a mere threat, does not constitute a waiver or abandonment of the claim. The conscientious objector must answer the truth according to the selective service forms. While he may refuse to do work ordered for him his refusal does not constitute a withdrawal or a contradiction of the statements appearing in his conscientious objector form. The position taken here is sustained by *Franks v. United States*, 9th Cir., Oct. 4, 1954, — F. 2d —; compare *United States v. Liberato*, W. D. Pa., 1953, 109 F. Supp. 588, 589.

The statement of refusal to perform civilian work as being no basis in fact is supported by the Congressional history of the act.—See Senate Report No. 1268, 80th Congress, 2d Session, May 12, 1948, to accompany Senate Bill No. 2655, *infra*, this brief, p. 38. See also the Conference Report on Selective Service Act of 1948, Report No. 2438, House of Representatives, 80th Congress, 2d Session, dated June 19, 1948, to accompany Senate Bill No. 2655, *infra*, p. 38. See also the Report by Armed Services Committee, House of Representatives, No. 535, 82nd Congress, 1st Session, dated May 31, 1951, to accompany Senate Bill No.

1, *infra*, p. 39. It is clear from these reports that Congress rejected 'he thought that a conscientious objector could be taken out of his proper status by refusing to do work assigned to him. Congress intended that the conscientious objector be prosecuted for refusal to do civilian work rather than be penalized by the board through the withdrawal of the conscientious objector status.

There is nothing in the act or the regulations that authorizes a procedure for conscientious objectors different from that permitted in cases where the ministerial claim is involved. The conscientious objector claim is not a subjective claim. It is objective. It can be established in the same way that the ministerial claim is established. There is no broader room for speculation in the case of conscientious objectors than there is in the classification of ministers. *United States v. Simmons*, 7th Cir., 1954, 213 F. 2d 901; and *White v. United States*, 9th Cir., Sept. 14, 1954, — F. 2d —, to the contrary, are erroneous.

The use of the word "conscientiously" does not confer unlimited powers upon the draft boards. This word is not a vague and indefinite dragnet. It merely means that if a man is not a faker, is not falsely impersonating or is not lying about his claim he is "conscientiously" opposed. It merely means, does he really and genuinely oppose participation in combatant and noncombatant service? If the interpretation of the statute contended by the Government is accepted, then it will be impossible for a court ever to say that there is no basis in fact in a conscientious objector case where the boards have denied the claim in the face of undisputed evidence. In every classification of a conscientious objector that is always involved: the interpretation of the word "conscientiously."

Petitioner did not appear before the appeal board. The appeal board was the board that made the final classification. That board is in no better position to determine the question of whether petitioner is "conscientiously" opposed to war than is this Court. The appeal board had nothing but the

papers before it. These papers showed indisputably that petitioner was a conscientious objector. The denial of the claim was without basis in fact.

## T W O

**The act and the regulations do not permit the Department of Justice to recommend to the appeal board that willingness of petitioner to defend himself and his brothers is basis in fact for the denial of the conscientious objector status.**

The Assistant Attorney General recommended that petitioner be denied the conscientious objector claim because of belief in self-defense. This recommendation is illegal. Self-defense is no basis under the statute or the regulations for denying the conscientious objector claim. The decision of the court below was judicial legislation. It added to the words of Congress. It constitutes a repeal of the conscientious objector exemption from military service.

If self-defense is a basis in fact for the denial of the full conscientious objector status (opposition to noncombatant as well as combatant service) then a soldier conscientious objector, willing to wear a uniform and do hospital work, may likewise be denied his conscientious objector status. Surely Congress did not intend to deny the I-A-O classification to the conscientious objector willing to perform non-combatant military service because he is willing to defend himself. Since that type of conscientious objector cannot be denied the claim because of self-defense, then by force of the same reason the full conscientious objector cannot be deprived of his rights under the act.

The only limitation Congress placed on the definition of a conscientious objector in Section 6(j) of the act was that the beliefs be not political, sociological or philosophical. Had Congress intended to deny the person willing to defend himself the conscientious objector status it would have said so. Self-defense is the law of God, the law of nature and the law of the land. Congress knew this inherent right

of man. It certainly did not intend it to be used as the basis for the denial of the conscientious objector status. It is judicial legislation of the rankest sort to hold that Congress intended such a result. Such cannot be imputed to Congress in the absence of something explicit in the act.

It is unreasonable to assume that Congress intended that the conscientious objector should be required to agree to the destruction of his own life in order to be granted the exemption from military service as a conscientious objector. It is beyond the prerogative of the Government to read into the law something that Congress did not say or intend to say. The Department of Justice and the court below have taken a position that is inconsistent with that taken by the Department of Justice in other cases. The Assistant Attorney General in charge of the recommendations throughout the United States in conscientious objector cases has, since the recommendation in this case, retreated from the position that self-defense is basis in fact for the denial of the conscientious objector status. The Department of Justice has sent out a memorandum to all hearing officers of the Department throughout the country that self-defense is no longer considered to be basis in fact for the denial of the conscientious objector status. The Solicitor General of the United States before this Court in *Taffs v. United States*, No. 576, October Term, 1953, also declared he did not seek review of the holding of the court below that the willingness of Jehovah's Witnesses to defend themselves does not exclude them from the classification as conscientious objectors.

The decision of the court below is in direct conflict with *Annett v. United States*, 10th Cir., 1953, 205 F. 2d 689, 691-692; *United States v. Pekarski*, 2d Cir., 1953, 207 F. 2d 930; *Taffs v. United States*, 8th Cir., 1953, 208 F. 2d 329, 331; *United States v. Hartman*, 2d Cir., 1954, 209 F. 2d 366, 369-370; *Jessen v. United States*, 10th Cir., 1954, 212 F. 2d 897; *Hinkle v. United States*, 9th Cir., Sept. 24, 1954, —F. 2d—;

compare what Mr. Justice Douglas said in *Clark v. United States*, 74 S. Ct. 357, 98 L. Ed. 171 (Dec. 10, 1953).

The recommendation of the Department of Justice, rejecting the report of the hearing officer and recommending that petitioner be denied the conscientious objector status because of his belief in self-defense, became a vital link in the proceedings. (*United States v. Everngam*, D. W. Va., 1951, 102 F. Supp. 128; *Hinkle v. United States*, 9th Cir., Sept. 24, 1954, — F. 2d —) The chain is no stronger than its weakest link. This defect in the chain of proceedings destroys the classification of the appeal board.

The construction placed upon the act by the Department of Justice (that the conscientious objector status be denied to one willing to defend himself) is discriminatory. The interpretation places reasonable doubt upon the validity of the law as enforced. Since this construction gives rise to grave and doubtful constitutional questions it ought to be avoided by adopting a construction that does not discriminate because of the belief in self-defense. The recommendation of the Department of Justice to the appeal board destroyed the appeal board's classification upon which the order to report for induction is based.

## ARGUMENT

### ONE

**The final denial of the conscientious objector status by the appeal board was without basis in fact; consequently, the final I-A classification by the board is arbitrary, capricious and contrary to law.**

Section 6(j) of the act (50 U. S. C. App. § 456(j), 65 Stat. 75, 83, 86) provides:

"Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious

training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code."

Section 1622.14 of the Selective Service Regulations (32 C. F. R. § 1622.14 (amended by E. O. 10420, 17 F. R. 11593, Dec. 19, 1952)) provides:

*"Class I-O: Conscientious objector available for civilian work contributing to the maintenance of the national health, safety, or interest.*

—(a) In Class I-O shall be placed every registrant who would have been classified in Class I-A but for the fact that he has been found, by reason of religious training and belief, to be conscientiously opposed to participation in war in any form and to be conscientiously opposed to participation in both combatant and noncombatant training and service in the armed forces."

The entire approach of the court below to whether there was no basis in fact for the appeal board classification is grounded upon error. To begin with, it ignores the doctrine of *Dickinson v. United States*, 346 U. S. 389 (1953). That decision requires that the board ". . . must find and record affirmative evidence that he has misrepresented his case. . ."—346 U. S., pp. 396-397, 399 (dissenting opinion).

Congress says that a man is a conscientious objector if he (1) believes in the Supreme Being, (2) conscientiously opposes participation in the armed forces by combatant and noncombatant service, and (3) bases such objection on religious training and belief. The petitioner concededly believed in the Supreme Being. He concededly opposed participation in the armed forces. He based those objections

on his religious training and belief. Since the statute failed to specify any length of time for the religious training it is speculation and irrelevant to say that it was not long enough. Length of religious training is immaterial under both the act and the regulations.

The documentary evidence submitted by the petitioner establishes that he had sincere and deep-seated conscientious objections against his participation in combatant and noncombatant military service that were based on his "relation to a Supreme Being involving duties superior to those arising from any human relation." This material also showed that his belief was not based on "political, socio-logical, or philosophical views or a merely personal moral code," but that it was based upon his religious training and belief as one of Jehovah's Witnesses, being deep-seated enough to drive him to enter into a covenant with Jehovah and dedicate his life to the ministry.

There is no question whatever on the veracity of the petitioner. The local board accepted his testimony. Neither the local board nor the appeal board raised any question as to his veracity. The question is not one of fact but is one of law. The law and the facts irrefutably establish that petitioner is a conscientious objector opposed to combatant and noncombatant service.

In view of the fact that there is no contradictory evidence in the file disputing petitioner's statements as to his conscientious objections and there is no question of veracity presented, the problem to be determined here by this Court is one of law rather than one of fact. The question to be determined is: Was the holding by the appeal board (that the undisputed evidence did not prove petitioner was a conscientious objector opposed to both combatant and noncombatant military service) arbitrary, capricious and without basis in fact?

The undisputed documentary evidence in the file before the appeal board showed that the petitioner was conscientiously opposed to participation in combatant and noncom-

batant military service. This showing brought him squarely within the statute and the regulation providing for classification as a conscientious objector. This entitled him to exemption from combatant and noncombatant military training and service.

It has been held by many courts of appeals that the rule laid down in *Dickinson v. United States*, 346 U. S. 389, 396-397, 399 (1953), (holding that if there is no contradiction of the documentary evidence showing exemption as a minister there is no basis in fact for the classification) also applies in cases involving claims for classification as conscientious objectors.—*Weaver v. United States*, 8th Cir., 1954, 210 F. 2d 815, 822-823; *Taffs v. United States*, 8th Cir., 1953, 208 F. 2d 329, 331-332; *United States v. Hartman*, 2d Cir., 1954, 209 F. 2d 366, 368, 369-370; *Pine v. United States*, 4th Cir., 1954, 212 F. 2d 93, 96; *Jewell v. United States*, 6th Cir., 1953, 208 F. 2d 770, 771-772; *Schuman v. United States*, 9th Cir., 1953, 208 F. 2d 801, 802, 804-805; *Jessen v. United States*, 10th Cir., 1954, 212 F. 2d 897, 900; *United States v. Close*, 7th Cir., 1954, 215 F. 2d 439, 441-442; *United States v. Wilson*, 7th Cir., 1954, 215 F. 2d 443, 446; *contra United States v. Simmons*, 7th Cir., 1954, 213 F. 2d 901 (No. 251, October Term, 1954).

In *Jessen v. United States*, 10th Cir., 1954, 212 F. 2d 897, 900, after quoting from *Dickinson v. United States*, 346 U. S. 389, 396, the court said:

“Here, the uncontroverted evidence supported the registrant’s claim that he was opposed to participation in war in any form. There was a complete absence of any impeaching or contradictory evidence. It follows that the classification made by the State Appeal Board was a nullity and that Jessen violated no law in refusing to submit to induction.”

The decision of the court below is in direct conflict with the holdings in other cases decided by other courts of ap-

peals. In those cases the appellants, like petitioner here, were Jehovah's Witnesses. They showed the same religious belief, the same objection to service and the same religious training. While different speculations were relied upon by the Government, which were discussed and rejected by the courts in those cases, the courts were also called upon to say, on facts identical to the facts in this case, whether there was basis in fact. For instance, see *Jessen* where the Tenth Circuit (after following *Taffs v. United States*, 8th Cir., 1953, 208 F. 2d 329) said:

"The remaining question is whether there was any basis in fact for the classification made by the State Appeal Board."—212 F. 2d, p. 899.

The holdings of other circuits with which the holding of the court below (that there was basis in fact for the denial of the classification) directly conflicts are: *Annett v. United States*, 10th Cir., 1953, 205 F. 2d 689; *United States v. Pekarski*, 2d Cir., 1953, 207 F. 2d 930; *Taffs v. United States*, 8th Cir., 1953, 208 F. 2d 329; *Jewell v. United States*, 6th Cir., 1953, 208 F. 2d 770; *Schuman v. United States*, 9th Cir., 1953, 208 F. 2d 801; *United States v. Hartman*, 2d Cir., 1954, 209 F. 2d 366; *Pine v. United States*, 4th Cir., 1954, 212 F. 2d 93; *Jessen v. United States*, 10th Cir., 1954, 212 F. 2d 897; *United States v. Close*, 7th Cir., 1954, 215 F. 2d 439; *United States v. Wilson*, 7th Cir., 1954, 215 F. 2d 443. And these cases ought not to be pushed aside on the specious but factitious ground that because the courts in some of those cases discussed the speculations urged on the courts as basis in fact the cases are different. They are not different, because on the question of whether there was basis in fact the evidence in each case is identical to the facts in this case and the holdings were the opposite to that made by the court below in this case. Such attempted distinction would be a distinction without a difference. The cases above cited are identical to the facts in this case in so

far as the statements in the draft board record showing conscientious objection are concerned.

The court below did not rely upon it, but mentioned that Sicurella was late in making the conscientious objector claim. The situation here is entirely different from the case of a man who was not a conscientious objector at the time he registered. Here there is no situation of a man suddenly becoming a conscientious objector as his draft board case is progressing to the point of induction. The record undisputedly shows that Sicurella was a conscientious objector for many years before he registered. His only default was his failure to file the claim. He gave very good and valid reasons for failing to sign the conscientious objector claim and filed a special form for conscientious objector.

He said that he did not know that he was authorized to make the conscientious objector claim, because of his putting in the ministerial claim. He thought that he had to make the ministerial claim first and that if he lost on that, then put in the claim for classification as a conscientious objector. This is his testimony as appears from the record. See the testimony. [R. 19, 69-70, 72, 73, 74]

The situation with Sicurella at the time he made out his questionnaire (in which he failed to indicate that he was a conscientious objector) is similar to that of a married man with a child who neglects to state the facts in his questionnaire. Suppose Sicurella were married and had a child at the time he filled out his questionnaire. Until recently this would have deferred him. Assume that he had made a mistake about whether to claim such deferment at first and that he waited until the last when he failed on his ministerial claim. Then he made the claim for classification as a father. Such delay would not affect his claim for exemption as a father. Suppose a judge, congressman, or other officer deferred from service by law fails to indicate that in his questionnaire and relies on his exemption as a father, which is taken away by law, making fathers liable for the draft. Surely when the change of classification from that of a

father to the I-A is made the judge or congressman can go in and claim his status as an official deferred by law. So also Sicurella is entitled to make his conscientious objector claim known at a late date.

This is especially true when there is no evidence of fraud on his part. He concluded in good faith that he could not make the conscientious objector claim simultaneously with the ministerial claim.

Sicurella had a very good reason for not signing the conscientious objector blank at the time he made out the questionnaire. He erroneously thought that it was necessary for him to press first the minister's exemption. There was reasonable basis for this erroneous belief. This flowed from the activities of the FBI, under an order of the Attorney General in interviewing Jehovah's Witnesses pursuant to the FBI investigation under Section 6(j) of the act.—See Circular No. 3461, September 28, 1943, of the Attorney General.

In several cases decided by the courts it has been held that the activities of the FBI in informing Jehovah's Witnesses seeking ministerial exemption that it would be better to give up or not press the conscientious objector claim because they could not test the two simultaneously are illegal.

Under the ordinary practice in the Selective Service System it is not required that a registrant sign Series XIV of the classification questionnaire in order to be entitled to claim the conscientious objector classification. In Local Board Memorandum No. 41, issued November 30, 1951, and amended August 15, 1952, the National Headquarters of Selective Service System notified the local boards that the conscientious objector claim should be considered regardless of how it was presented to the board. The memorandum says, among other things:

*"2. What constitutes a claim of conscientious objection.—A registrant should be considered to have claimed conscientious objection to war if he*

has signed Series XIV of the Classification Questionnaire (SSS Form No. 100), if he has filed a Special Form for Conscientious Objector (SSS Form No. 150), or if he has filed any other written statement claiming that he is a conscientious objector."—Local Board Memorandum No. 41, National Headquarters, Selective Service System, Washington, Nov. 30, 1951, amended Aug. 15, 1952.

On February 23, 1951, the State Director of Illinois ordered the local board to reopen and reconsider the case because of the filing of the conscientious objector form. [R. 83-84] What proof of a waiver by the Selective Service System of the late filing could be stronger than this administrative order made by the State Director?

It is reasonable, therefore, to conclude that the late filing of the conscientious objector claim cannot be considered as a waiver of the right to make the claim. Since the Selective Service System did not bar Sieurella from making the claim it is beyond the competency of the courts to say that the claim was filed illegally, out of time. The claim must be considered as having been timely filed since the Selective Service System did not hold that it was filed out of time.

The Government may rely upon *United States v. Dal Santo*, 7th Cir., 1953, 205 F. 2d 429, as authority for the affirmance of this case. The *Dal Santo* case is not in point. While in both cases the registrant was late in filing his conscientious objector claim, in the *Dal Santo* case the hearing officer recommended that *Dal Santo* was not sincere because he was a late-comer to Jehovah's Witnesses. Here the hearing officer did not rely upon the late filing of the conscientious objector form. He found Sieurella to be a sincere conscientious objector, notwithstanding the late filing of the form. The *Dal Santo* case is not in point; it does not control here.

It may not be argued that omissions in the conscientious

objector form would be basis in fact for the denial of the conscientious objector classification. This would not *per se* give basis in fact for the denial of the conscientious objector status unless the uncompleted part of the form was on some vital or crucial point. For instance, if the registrant neglected to give references or to fill out the portion as to his employment or residences, certainly this would not supply basis in fact for the denial of the conscientious objector claim.

Before a claim can be denied because of an incomplete form it must be shown that the draft board or the Department of Justice made an issue of it and relied on the incompleteness as a basis for the denial of the classification. It cannot be resorted to for the first time in the courts as a basis in fact. This would be speculation. It would be treating the registrant as though he were being dealt with as a litigant represented by a lawyer. In *Berman v. Craig*, 3rd Cir., 1953, 207 F. 2d 888, 891, it was held:

“Registrants are not thus to be treated as though they were engaged in formal litigation assisted by counsel.”

See Section 1626.13 and 1626.24 of the Selective Service Regulations, which show that if the appeal board finds that anything is incomplete it shall return the file to the local board and that the local board is required to check the file carefully before sending it to the appeal board to see that “the record is complete.”

A registrant is entitled to have his case in court considered so that the same issues that were taken up before the draft board will be passed on in the courts. The only place that the registrant has to complete the forms is before the draft board. He cannot have a trial *de novo* in the district court. (*Cox v. United States*, 332 U. S. 442 (1947)) Since there is no right of trial *de novo* and the papers are to be reviewed to determine the question, the courts ought not to be technical in dealing with the registrant, who is

not entitled to correct any errors that may be discovered for the first time in the courts.

The Assistant Attorney General conceded that Sicurella was sincere. The statement by the Assistant Attorney General did not dispute the documentary evidence showing that Sicurella was a conscientious objector or the report of the hearing officer that recommended that Sicurella be given the conscientious objector classification (I-O). [R. 101] The absence of an explicit statement by the Assistant Attorney General that Sicurella was not sincere and the statement that he was sincere as a conscientious objector but that the only reason his claim was being rejected was that of his belief in self-defense, proved clearly that it was entirely proper to conclude the record shows that Sicurella was sincere and conscientiously opposed to war.

The court below held that petitioner defied all secular authority by stating his refusal to do civilian work and, therefore, he should be denied the conscientious objector status. This was solely because he stated that he was opposed to doing civilian work. Regardless of his statement of his opposition the hearing officer of the Department of Justice recommended that he be classified as a conscientious objector. It is to be noted that the Assistant Attorney General did not rely upon this statement as any basis for the denial of the conscientious objector status.

The holding made by the court below at this late date is highly speculative. It flies in the teeth of the decision of this Court in *Dickinson v. United States*, 346 U. S. 389, 396-397, since there is no reason stated in the papers except the reasons given by the Assistant Attorney General in his recommendation to the appeal board for the classification denying the conscientious objector status. It is entirely unfair and guesswork of the grossest sort to contend that this may have been a basis in fact. The courts are not permitted to indulge in speculation and say what may or may not have been basis in fact. It is the duty of the courts to search the records for affirmative evidence that contradicts

the claim. The statement made by Sicurella that he was opposed to doing civilian work does not in any sense of the word mean that he is not a conscientious objector.

It should be noted that nowhere in the record did the petitioner state that he was not a conscientious objector. The record shows to the contrary. It is true that he was also seeking, without merit, the exemption given to ministers of religion under the law. But the fact that he relied on his arguments and insisted on the groundless claim for the ministerial exemption as a basis for stating his refusal to do civilian work did not warrant the denial of the conscientious objector status.

The first and main fallacy of the holding of the court below is that it ignores the fact that the jurisdiction of the draft boards is limited to classification and issuance of orders for participation in service based on classification. The boards do not have the authority to penalize a registrant or make a determination that flies in the teeth of the facts of record, just because the registrant says he will not accept the service or work obliged by the classification. That a registrant declares he will not accept the work or service ordered by the board is no basis in fact to the board or authority for it to say that he is not a conscientious objector. His objections may go farther than the law allows and be conscientious. His penalty is punishment for refusal to do work, not to be ordered into the armed forces. That he has objections to the performance of the work does not spell that he is not a genuine conscientious objector. It does not mean that he can be classed as liable for military service. It merely means that as a genuine conscientious objector he objects to the work assigned to him. His objection to the work assignment and refusal to do it does not contradict what he said in his papers about being a conscientious objector. It is no basis for the denial of the claim.

It is the responsibility of the draft boards to classify registrants according to their papers appearing in the files.

The papers submitted by Sicurella showed that he was a conscientious objector. He met the statute in every sense of the word. The mere fact that he stated that he was opposed to doing service that conscientious objectors are ordered to do is no ground for denying the conscientious objector status.

The draft boards are classification boards. They are not authorized to enforce the draft law by penalizing registrants. The courts are the only ones that are permitted to administer sanctions under the law. Even the courts must follow the law. The draft boards, also, must follow the law. A man cannot be denied a classification that he is properly entitled to purely because he states that he is opposed to the service required of registrants in that classification. It is the duty of the draft boards to classify the registrants. It is the responsibility of the registrants to comply with the classification order given by the board unless there is some defect in the proceedings. If there is a defect in the proceeding it is the responsibility of the courts to refuse to enforce the order of the draft boards regardless of their belief that the registrant is not entitled to claim a classification where he opposes the service required by that classification.

The speciousness of the argument of the Government can best be demonstrated in this analogy. Suppose the law required a redheaded man to do work as a conscientious objector of an alternate civilian nature and a blackheaded man to do service in the armed forces. Purely because the redheaded man declared that he was opposed to the performance of civilian work would not justify the board in finding that he was not redheaded. So, also, purely because a conscientious objector states that he is opposed to performing civilian work does not at all give basis in fact for the denial of the conscientious objector status. The draft board, therefore, must properly classify the conscientious objector as a conscientious objector. It must then order him to do work as a conscientious objector. If, as and when he refuses to do proper work that he has been ordered to do as

a conscientious objector he can be prosecuted. Unless and until he has been legally and properly classified first by the local board he cannot be penalized by being given some erroneous classification and then having the board say the other classification to which he is entitled is forfeited because he opposes the work required by that classification. Such factitious type of argument and holding ought not to be accepted by this Court. It results in a complete undermining of the entire doctrine of "no basis in fact" laid down by this Court in *Estep v. United States*, 327 U. S. 114, 122-123 and *Dickinson v. United States*, 346 U. S. 389, 394, 396-397 (1953). This same argument was made in *Pine v. United States*, 4th Cir., 1954, 212 F. 2d 93; and in *Jewell v. United States*, 6th Cir., 1953, 208 F. 2d 770, and rejected. The answer to this type of argument is that it is for the local boards to classify. The local boards cannot penalize. A conscientious objector must answer the truth according to the selective service forms sent to him. He may oppose the civilian work and state he will refuse to do it. This does not mean he is not a conscientious objector.

This same contention was sustained by the Court of Appeals for the Ninth Circuit, in *Franks v. United States*, No. 14114, decided by that court on October 4, 1954. There, the court said, among other things:

"We are not unaware of the high probability that Franks, had he been classified I-A-O, would nevertheless have refused induction and ultimately found himself indicted in much the same manner as has happened here. Perhaps the local board and the hearing officer and the appeal board also had the feeling that they might as well classify the appellant as I-A for the reason that like other Jehovah's Witnesses he would probably refuse induction as a I-A-O.

"It is our view, however, that it was not for the local board, any more than it is for this court,

to say that the registrant should not be placed in a certain classification merely because he did not want that classification or was seeking a lower class or would probably refuse to acquiesce in such a classification. ([Footnote 2:] It cannot be demonstrated to a certainty that this registrant would not have changed his mind and accepted a I-A-O classification when he found that that was the best he could do.) At the time of the local board's classification, the Regulations Title 32, Sec. 1623.2, provided as follows:

"Upon undertaking to classify any registrant, unless grounds are established to place the registrant in Class I-C under the provisions of Sec. 1622.7 of this chapter, the registrant shall be classified in the lowest class for which he is determined to be eligible with Class I-A considered the highest class and Class V-A considered the lowest class according to the following table: . . ." (In the table Class I-A-O is listed below Class I-A). ([Footnote 3:] The same numbered regulation in effect at the time the appeal board classified registrant was substantially similar.)

"If some doctrine of waiver by the registrant were to be applied by the local board, then the mere fact that the registrant was claiming a lower classification than he was entitled to, could be used as a basis for classifying any registrant I-A. In *Cox v. Wedemeyer*, 9 cir., 192 F. 2d 920, we rejected and disapproved a similar suggestion in respect to classifications by an appeal board. ([Footnote 4:] *Pine v. United States*, 4 cir., 212 F. 2d 93, 98, in citing *Cox v. Wedemeyer*, *supra*, also refers to Local Board Memorandum No. 41, to the same general effect. Cf. *Clementino v. United States*, 9 cir., — F. 2d —, (decided September

27, 1954.)"—*Franks v. United States*, 9th Cir., Oct. 4, 1954, — F. 2d —.

In *United States v. Liberato*, W. D. Pa., 1953, 109 F. Supp. 588, 589, it was held that a registrant could not be ordered inducted into the military service because he stated to the board that he wanted the opportunity to decide whether he could accept the work selected by the board. The same principle applies here. The status of petitioner as a conscientious objector still remained, notwithstanding his statement that he would not accept the civilian work.

The only legal authority that the board had was to classify the petitioner properly on the state of the record. If he was not entitled to the minister's exemption then he should have been placed in the conscientious objector status regardless of his statement. He could then have been ordered to do civilian work on a proper classification. Had he then refused to comply with the legal classification and was ordered to do civilian work he could have been prosecuted for failing to do civilian work. It is just as much a violation of the law to refuse to do civilian work as it is to refuse to do military service.

The sum and substance of the answer to the holding of the court below is that the courts are the agency chosen by Congress to enforce the penalties for refusing to obey the law. That a registrant threatens to violate the law does not warrant the board also to violate the law. It is axiomatic that two wrongs do not make a right. The board is not permitted to violate the law because of a threat to defy a civilian work order. When it violates the law for this reason the courts must enforce the law against the board and put it back in its place of making lawful classifications, not unlawful ones because of the threats of the registrant.

Another reason the holding of the court below is not in point is that the directions from the Selective Service System prohibit the draft boards from denying the conscientious objector status on any grounds of waiver unless

the waiver is intelligently and deliberately made in writing. As long as the record shows indisputably that a registrant has made the claim lawfully and has not withdrawn the claim in writing it is beyond the authority of the boards to forfeit the claim for any reason except a denial based on facts showing the registrant not to be a conscientious objector. The only way the board can avoid properly classifying according to the undisputed evidence showing conscientious objections is to get a written waiver from the registrant.—See Local Board Memorandum No. 41, issued by National Headquarters of Selective Service System, November 30, 1951, as amended August 15, 1952.

The position here taken by petitioner as to the construction of the law in question is supported by the legislative history of the Act. In Senate Report No. 1268, 80th Congress, 2d Session, dated May 12, 1948, to accompany Senate Bill No. 2655, the committee stated, among other things:

“Therefore, where a registrant who has been assigned to work of national importance purposefully fails to comply with the duties imposed upon him, provision is made for withdrawing the privilege, and assigning the registrant to noncombatant service in the armed forces. Provision also is made for benefits for persons who perform work of national importance, and who suffer disability or death while in the performance of duty.”

The Conference Report on Selective Service Act of 1948, rejected this proposal. (See Report No. 2438, House of Representatives, 80th Congress, 2d Session, dated June 19, 1948, to accompany Senate Bill No. 2655.) That report stated, among other things:

“The House amendment provided that conscientious objectors found to be opposed to participation in noncombatant service should be deferred from induction for service under the legisla-

tion. [¶] The conference agreement adopts the provisions of the House amendment providing for the deferment from induction of those conscientious objectors who are found to be opposed to participation in noncombatant service."

Report by Armed Services Committee, House of Representatives, No. 535, 82nd Congress, 1st Session, dated May 31, 1951, to accompany Senate Bill No. 1, provided:

"Persons who are found by local boards to be opposed to noncombatant service shall be ordered by their local boards, subject to regulations prescribed by the President, to perform civilian work contributing to the maintenance of the national health, safety, or interest for a period of 24 months. A conscientious objector's refusal to perform such work will subject him to the penalties of the Selective Service Act.

"The House amendment merely deferred such persons. The Senate bill required such persons to be assigned to work of national importance under civilian direction.

"The House managers objected to this portion of the Senate bill since it contemplated the establishment of national work camps. The language agreed to by the House and Senate conferees will permit the President to prescribe the types of employment to which conscientious objectors may be assigned, but such employment will not be performed through the establishment of, or assignment to, national work camps."

It is plain from the above reports of the Senate and House that Congress did not intend to authorize the local boards to take a person out of the conscientious objector status solely because he refused to do the work assigned. The obvious remedy and procedure prescribed by Congress is the prosecution of the conscientious objector properly

classified as liable for civilian service for refusal to do the work he is ordered to perform.

It may be argued that the classification by the draft boards is final even though erroneous. This is not exactly a full statement of the law. It is true so long as the registrant can show some contradiction or dispute in the administrative record. In the absence of such dispute of fact, it cannot be said that there is a question of fact involved. Since there is no question of fact involved, and the classification is contrary to the facts establishing eligibility for the classification claimed, there is no basis in fact and the draft boards are without jurisdiction.—*Estep v. United States*, 327 U. S. 114, 122-123 (1946); *Dickinson v. United States*, 346 U. S. 389, 394, 396-397; *Schuman v. United States*, 9th Cir., 1953, 208 F. 2d 801, 802, 804-805; *Jewell v. United States*, 6th Cir., 1953, 208 F. 2d 770, 771-772; *United States v. Hartman*, 2d Cir., 1954, 209 F. 2d 366, 368, 369-370.

An attempted distinction of the "no basis in fact" rule is made between the case of a conscientious objector and a minister. (*United States v. Simmons*, 7th Cir., 1954, 213 F. 2d 901, 904-905; *White v. United States*, 9th Cir., 1954, — F. 2d —) It is said that determination of the conscientious objector status involves inquiring into mental processes of a registrant. Those courts say that when the local board has said what is going on in the registrant's mind, such conclusion is final and settles the matter. It cannot be reviewed in court, declare such courts.

There is not one word in the act or the regulations that gives the board or the courts the right so to speculate. They cannot say what goes on in the mind of a conscientious objector claiming such classification, as they cannot in the case of a minister claiming his exemption.

The act deals only with the objective: statements and declarations of the registrants. It does not mention or go into the subjective. Congress conferred no right to roam into the field of mind reading, as suggested by the Government. Congress confined the courts and the boards to deter-

mination of the conscientious objector status based only on the concrete and outward manifestations of the registrant.

The act deals with objection or opposition to service in the armed forces. Objection is something objective. It is manifested by speech. It is something that can be determined as easily as any other fact. Does the registrant object to the point of refusing to do military service? If he does he is an objector. The inquiry is then specified by the act, dealing again with the concrete, not mind reading. The act says: Is his objection based upon religious training and belief? This is an element that does not involve the subjective. It deals with that which is manifest. It can be established the same as can the ministry claim. There is no broader room for speculation permitted by the act here because it deals with religious training and belief. The two concrete facts of opposition to service and religious training and belief make a *prima facie* case for classification as a conscientious objector under the statute.

By using the word "conscientiously" from the statute, the Government argues that it can apply its own arbitrary ideas as to what constitutes a conscientious objector. Use of the word does not allow the Government to write its own definition of what a conscientious objector is. The definition appears in the statute.

The use of the word "conscientiously" in the act that qualifies objection to training and service does not give the Government an illegal, vague and indefinite dragnet. The word is not a license to indulge in speculation. The word has no magic to it. It has an ordinary definition known to man. It is not a word that is confined to the esoteric or to clairvoyants. It cannot be used to take the board and the courts out of this world into the stratosphere of speculation. But the Government would have the Court soar up into it, contrary to law.

By the use of the word "conscientiously" Congress merely intended that if a man was a faker, feigning or falsely impersonating a conscientious objector the board could con-

elude that he was not "conscientiously" opposed. But surely by the use of the word "conscientiously" Congress did not intend to allow a board to speculate and defy the undisputed evidence showing that a person is an objector to training and service, based on religious training and belief. The use of the word "conscientiously" merely permits the draft board to do what the dissenting justices of the Supreme Court said in *Dickinson v. United States*:

"The board must find and record affirmative evidence that he has misrepresented his case."—346 U. S. 389, 399.

Had Congress intended to give such claimed unlimited power to the boards in cases of conscientious objectors it would have said so. Surely it did not intend to allow the courts to interpret the word "conscientiously," used in the statute, to give a power to the boards over conscientious objectors that was not given to the boards in the case of other registrants.

If the Government is right on the interpretation it puts on the act then it will be impossible for a court ever to say that there is "no basis in fact" for the denial of the conscientious objector status. If the boards can, under a vague interpretation of "conscientiously," reject the evidence of one conscientious objector without any concrete, definite, disputing evidence in one case, then they can do it in all cases of conscientious objectors, regardless of the facts. Then all is ended. No longer will the "no basis in fact" rule mean anything to the conscientious objector. Through this sleight-of-hand process of argument the Government is attempting to amend the act. The Court should continue to stand by the proposition that conscientious objectors are to be given the same fair treatment under the act as all other classes of registrants are entitled to receive.

Respondent subjugates the power of this Court to that of the appeal board. It may be said that the Court is with

nothing but the cold record before it. Add the contention that the Court is not in a good position to rule on a question that involves the examination of the state of mind of a defendant. However, the appeal board that made the final classification in this case, petitioner submits, is in no better position than this Court. All that the appeal board had was the cold record before it. That is no more than this Court has. What superior powers do the men on the appeal board have over the judges on this Court in interpreting the law and applying it to the cold record? None. The power is with this Court to correct the gentlemen on the appeal board.

The suggestion was made in the court below that an inference can be drawn, particularly after looking at the registrant himself, that this registrant is not sincere and religious. This should be rejected. (*White v. United States*, 9th Cir., Sept. 14, 1954, — F. 2d —) The appeal board did not see the registrant. It had no chance to exercise the right claimed by the Government. It did not give any reasons why it rejected the claim. It is pure speculation for the respondent to suggest that this was the reason for the denial of the conscientious objector status. (*Dickinson v. United States*, 346 U. S. 389, 396-397) It must affirmatively appear from proof in the file. The respondent shows that it is relying entirely on speculation. This is not permitted in cases of this kind.

There is no basis in fact for the classification in this case, because there are no facts that contradict the documentary proof submitted by petitioner. The facts established in his case show that he is a conscientious objector to combatant and noncombatant military service. The classification given is beyond the jurisdiction of the boards.

It is respectfully submitted that the denial of the conscientious objector claim by the appeal board is without basis in fact, arbitrary and capricious.

## T W O

**The act and the regulations do not permit the Department of Justice to recommend to the appeal board that willingness of petitioner to defend himself and his brothers is basis in fact for the denial of the conscientious objector status.**

The Assistant Attorney General recommended to the appeal board that Sicurella was not a conscientious objector because he believed in self-defense. [R. 101] This recommendation was illegal. There is nothing in the act or the regulations that prevents a person who is willing to defend his own life from claiming objection to participation in combatant and noncombatant military service. A person might defend his life and still have conscientious objections to being a soldier.

In his recommendation the Assistant Attorney General said that because Sicurella is willing to defend himself, his family and others of Jehovah's Witnesses he is not a conscientious objector. This is an artificial and unauthorized ground for the denial of the conscientious objector status, invented by the Assistant Attorney General in his recommendation. He attempted to amend the act and regulations and read into them things that are not there. The law cannot thus be watered down by writing into it provisions that do not appear in it. This type of amendment of the law is contrary to the concept of government. Neither the administrators nor the court can add to or take away from the words of Congress, expressed in the act. Even the President in the promulgation of the regulations did not incorporate these specious arguments and grounds into the definition of a conscientious objector. If the draft boards, the hearing officers and others are to write the qualifications of a conscientious objector according to their whims and discretion, then the rights of the registrant will be made valueless and insecure. The law will be done away with.

It is not necessary for a conscientious objector to be willing to commit suicide in order to come under the def-

inition of a conscientious objector. A man can even be classified as a conscientious objector in Class I-A-O and be allowed to perform military service without bearing a gun, providing he is willing to do hospital work or similar noncombatant service. Remember such a man is still a conscientious objector! If followed to its logical conclusion the argument of the Assistant Attorney General would authorize the forfeiture of the I-A-O classification to a conscientious objector. Congress did not intend this. If a man can be a conscientious objector and work in a hospital in an army, then why the difference here? Certainly a man can defend himself and at the same time claim conscientious objection to both combatant and noncombatant military service.

The only conceivable basis for the denial of the full conscientious objector status is that Sieurella stated that he was willing to defend himself. Certainly the exercise of the right of self-defense does not carry with it the agreement that the person willing to defend himself has no conscientious objections to going into the armed forces.

Congress did not intend to forfeit the conscientious objector status to those that are willing to defend themselves. This is proved by the provision for the I-A-O classification. This classification is for the conscientious objector who is willing to do noncombatant service in the armed forces. If willingness to do this type of service does not forfeit the conscientious objector status, then by force of the same reason willingness of the conscientious objector to defend himself with his own hands when attacked does not impeach his good faith. The pivotal factor in determining the conscientious objector status is whether the registrant objects to military service on account of religious training and belief and not whether he objects to self-defense. If the facts show that he has conscientious objections to both combatant and non-combatant military service, then he is entitled to the conscientious objector status regardless of his lack of objections to self-defense. Willingness to defend oneself is im-

material and irrelevant to the issues involved in the case.

If Congress intended to forfeit a man's rights as a conscientious objector because he would defend himself in case of assault upon his person, then certainly Congress would have made this an element of the conscientious objector status. Congress explicitly stated that objections to military service could not be based on political and philosophical bases. Congress could very well have stated that a man could not be a conscientious objector if he was willing to fight in self-defense. From the dawn of history of mankind it has been the prerogative of an individual to defend himself. Self-defense has been said to be the first law of nature. It is the law of God. Self-defense is inherent in the nature of man. Congress knew this characteristic of man when it passed the law. Had Congress intended to eliminate a person who was willing to defend his own life from the status of conscientious objector, it would have plainly said so.

The law grants the conscientious objector status to one who has objections to participation in both combatant and noncombatant military service in the armed forces because his belief arises out of obligations to the Supreme Being that are superior to those to the state. Congress did not say that the status was granted only to persons who were extreme pacifists. Taking Congress at its own words, it cannot be contended by anyone, whether he be a draft board member, judge or prosecutor, that it is necessary to submit willingly to destruction of one's own life in order to be a conscientious objector to military service. Such interpretation contended for is unreasonable. It pulls the teeth out of the provisions protecting conscientious objectors. Unless and until Congress explicitly states that one who is willing to defend himself is not a conscientious objector, then it is beyond the prerogative of the Government or the courts to read into the law something that Congress did not say.

A man can be a conscientious objector under the act and still be willing to fight in defense of his life, his loved ones and his home. A man can be a very sincere conscientious objector to service in the armed forces, combatant or noncombatant, and still be willing to fight to defend his own life. It is virtually impossible for a man to be a conscientious objector if the law is given the interpretation that has been contended for in this case. Almost every person, even if a coward, a poltroon or extreme pacifist, when put to the test will, as a last resort, fight to defend himself. Since it is the 'first law of nature,' which almost every man will exercise when placed in the position where it is necessary, it is unreasonable to suggest that Congress intended to defeat, by this sophisticated type of reasoning, the very purpose of the exemption.

Congress had in mind exempting people who had conscientious objections to service in the armed forces. Congress did not say that the exemption extended only to persons who had objections to participation in service in the armed forces and also objections to the use of force in self-defense. Since the willingness to fight in self-defense was not incorporated into the act and regulations as a basis for the denial of the conscientious objector status, it is absolutely unreasonable to hold that a man cannot be a conscientious objector unless he also objects to the use of force under every circumstance, including self-defense.

A Christian who is one of Jehovah's Witnesses, as is petitioner, is authorized by the law of God to defend his own life. In order to protect himself and his life he may use force to such extent as appears reasonably necessary. If required to repel and quell a bodily attack upon himself and his brothers, he may use force to the extent of killing.

This is authorized by the law of the land. A Christian need not always retreat before defending against an aggressor. Sometimes retreat under the circumstances would be more dangerous than to stand one's ground and fight. This

was the position taken by the petitioner and explained to his local board and hearing officer.

The recommendation of the Assistant Attorney General, that petitioner be denied his conscientious objector status because of his willingness to defend himself, apparently has been impeached and abandoned as erroneous. Counsel for the appellant in the trial court in *Clark v. United States*, No. 14,176, pending in the United States Court of Appeals for the Ninth Circuit, read from a letter from the Department of Justice appearing in the file of Donald E. Kellar, one of Jehovah's Witnesses, registered with Local Board No. 85, Los Angeles County, California, a recommendation from Oscar Smith, the same Assistant Attorney General that wrote the letter of recommendation to the appeal board in his case. In that case Mr. Smith stated to the appeal board:

" . . . his good faith and the acceptance of the principle of self-defense is not incompatible with opposition to participation in war in any form. In view of his fine reputation and manifest sincerity, it is determined that registrant is a true conscientious objector by reason of religious training and belief entitled to I-O status."—See the record in *Clark v. United States*, No. 14,176, Ninth Circuit, at pages 65-66.

In the case of *Hinkle v. United States*, No. 14,163 on the docket of the Court of Appeals for the Ninth Circuit, it appears that the same Assistant Attorney General made a recommendation to the appeal board. (See the record in that case at pages F. 43-44.) The recommendation of the Assistant Attorney General was contrary to the position taken by the court below. There the Assistant Attorney General stated:

" . . . a belief that killing is justified in self defense does not refute a claim of conscientious objection."

The position taken by the Department of Justice here is also inconsistent with that taken by it before the appeal board for California in *Pitts v. United States*, No. 14,164, filed in the Court of Appeals for the Ninth Circuit. There T. Oscar Smith, in a letter to the chairman of the appeal board, on March 11, 1953, said:

"The hearing officer reviewed the Federal Bureau of Investigation report which established bona fide church membership and a reputation for sincerity. Registrant personally appeared with three witnesses. He told the Hearing Officer that he would defend himself against an assailant even if the attacker were a soldier in a foreign army, but under no circumstances would he serve in the armed forces. The Hearing Officer believed registrant had a deep devotion to his religious faith, but he felt that willingness to kill a soldier in another army in self defense was participation in defensive warfare. He, therefore, concluded that registrant was not entitled to classification as a conscientious objector.

"From all the evidence available it does not appear that registrant is disposed to defend the nation under any conceivable circumstances. His acceptance of the principle of self defense would not seem to embrace a belief in war because the attacker is wearing a uniform. Therefore, registrant's position is not inconsistent with opposition to participation in 'war in any form' as that term is used in the Universal Military Training and Service Act.

"After consideration of the entire file and record, the Department of Justice finds that the registrant's objections are sustained as to both combatant and noncombatant training and service. It is, therefore, recommended to your Board that the registrant be classified in Class I-O."

The Department of Justice has now definitely rejected the thought and argument that a registrant cannot be a conscientious objector if he believes in self-defense.

Before concluding the discussion on this phase of the case it is important to call to the attention of the Court what the Acting Solicitor General said in his petition for writ of certiorari in *Taffs v. United States*, No. 576, October Term, 1953, at page 11:

“We do not here seek review of the holding of the court below that the expressed willingness of the registrant and other Jehovah’s Witnesses to use force, even to the extent of killing, in self-defense or in defense of home, family, or associates, does not of itself exclude them from the classification of conscientious objectors. The Department of Justice in its instructions to hearing officers for conscientious objector cases has taken the same position. See Appendix B, *infra*, pp. 20-24. See *Annett v. United States*, 205 F. 2d 689 (C. A. 10). Nor do we seek review of the determination that this particular registrant was sincere in the beliefs expressed by him and a *bona fide* member of Jehovah’s Witnesses.”

The change of view by the Department of Justice on this point (that self-defense may forfeit one’s right to classification as a conscientious objector) is apparently the result of the decision by the Court of Appeals for the Tenth Circuit in *Annett v. United States*, 10th Cir., 1953, 205 F. 2d 689, 691-692. This decision, holding that belief in self-defense is no basis for the denial of the conscientious objector status, has been followed in *Taffs v. United States*, 8th Cir., 1953, 208 F. 2d 329, 331; and *United States v. Hartman*, 2d Cir., 1954, 209 F. 2d 366, 369-370. The Court of Appeals for the Ninth Circuit has also recently adopted this view in *Hinkle v. United States*, No. 14,163, decided September 24, 1954. There the court said:

"We do not think that Congress in using the words 'participation in war in any form' contemplated the sort of self defense of an individual or his family or the theocratic warfare described in the Bible as coming within the meaning of that phrase."

The Government is making application for writ of certiorari in the *Hinkle* case.

See what Mr. Justice Douglas stated in *Clark v. United States*, 74 S. Ct. 357, 98 L. Ed. 171:

"Moreover the claim of appellant that he should have been classified as a conscientious objector and the decision of the District Court against him shape up an issue that may turn on whether *Annett v. United States*, 205 F. 2d 689, represents the law. In that case the Court of Appeals for the Tenth Circuit held, on facts closely analogous to these, that there was no basis in fact for denial of a conscientious objector classification. The *Annett* decision has recently been followed by the Courts of Appeal for the Second and Eighth Circuits. *United States v. Pekarski*, 207 F. 2d 930 (C. A. 2d Cir.), decided October 23, 1953; *Taffs v. United States*, 208 F. 2d 329 (C. A. 8th Cir.), decided December 7, 1953."

The holding of the court below, giving freedom to the Assistant Attorney General and the appeal board to find against petitioner on grounds outside the law, conflicts with *Reel v. Badt*, 2d Cir., 1944, 141 F. 2d 845, where the court said (p. 347):

"In other words, he reached a conclusion as a matter of law which was directly opposed to our decision in *United States v. Kauten*, 2 Cir., 133 F. 2d 703."

See also *Phillips v. Downer*, 2d Cir., 1943, 135 F. 2d 521, 525-526.

It is submitted that it is unnecessary for petitioner to satisfy the Court that the Government is wrong or that the Department of Justice and the appeal board were in error in relying upon the self-defense belief of the petitioner to deny the conscientious objector status. It is sufficient that petitioner satisfy the Court that there has been error committed in the draft board proceedings by the reliance upon this ground by the appeal board and the Department of Justice. Since the appeal board and the Department of Justice relied upon this ground, a showing by the petitioner that the ground is error is adequate and sufficient to constitute a ground for reversal. In *Reel v. Badt*, 2d Cir., 1944, 141 F. 2d 845, the Court of Appeals reversed the case and remanded the file to the Selective Service System for reprocessing, because of ambiguity and doubt in the draft board record.—See also *United States v. Alvies*, N. D. Cal., 1953, 112 F. Supp. 618, 624.

This contention is similar to the contention that is ordinarily made in this Court when cases come to it from state courts. Where an error is committed in the charge to the jury and more than one offense is involved and the judgment is based on all charges or all counts, this Court will invariably reverse the case when one count or point is shown to be in error.—*Whitney v. California*, 274 U. S. 357, 363-369; see also *Terminiello v. Chicago*, 337 U. S. 1.

It is apparent that the conclusion reached by the hearing officer, after finding as a fact petitioner to be a conscientious objector, was arbitrary and capricious, because the basis for the rejection of petitioner's evidence was on illegal and irrelevant grounds.—*Linan v. United States*, 9th Cir., 1953, 202 F. 2d 693; *Hinkle v. United States*, 9th Cir., Sept. 24, 1954, — F. 2d —.

The report of the hearing officer was adopted by the Department of Justice and forwarded to the appeal board with a recommendation that it be followed. While the recommendation was only advisory, it was accepted and acted upon by the appeal board. The appeal board concurred in

the conclusion reached by the hearing officer. It classified petitioner I-A and denied his conscientious objector status. This action of the appeal board prevents the advisory recommendation of the Department of Justice from being harmless error.—See *United States v. Everngam*, D. W. Va., 1951, 102 F. Supp. 128, 131; *Hinkle v. United States*, 9th Cir., Sept. 24, 1954, — F. 2d —.

A chain is no stronger than its weakest link. The recommendation of the Department of Justice and its acceptance by the appeal board becomes a link in the chain. Since it is one of the links of the chain its strength must be tested. (*United States v. Romano*, S. D. N. Y., 1952, 103 F. Supp. 597.) The absence of the FBI report from the record and the withholding of it from the registrant at the hearing produce a break in the link and make the entire Selective Service chain useless, void and of no force and effect. This Court held in *Kessler v. Strecker*, 307 U. S. 22, that if one of the elements is lacking the "proceeding is void and must be set aside." (307 U. S., at page 34) The acceptance of the recommendation of the Department of Justice that has been made up without producing the FBI report to the registrant in the proper time and manner makes the proceedings illegal, notwithstanding the fact that the recommendation is only advisory. The embracing of the report and recommendation by the appeal board jaundiced and killed the validity of the proceedings.

This view of the reliance upon the recommendation of the Department of Justice making the report of the hearing officer and the recommendation a vital link in the administrative chain is supported by *United States v. Everngam*, D. W. V., 1951, 102 F. Supp. 128, at pages 130, 131.—See also *United States v. Bouziden*, W. D. Okla., 1952, 108 F. Supp. 395; cf. *Taffs v. United States*, 8th Cir., 1953, 208 F. 2d 329; *Hinkle v. United States*, 9th Cir., Sept. 24, 1954, — F. 2d —.

The construction that has been placed upon the act by the Department of Justice in this case and by the court

below is unreasonable. It works a forfeiture against a large segment of religion in the United States. The interpretation of the act would deny to 150,000 of Jehovah's Witnesses entirely the protection of the law. This would be notorious discrimination of the worst sort.

A reasonable interpretation of the statute by this Court is due, indulging all reasonable doubts concerning the meaning of the act in favor of the rights of one indicted thereunder. (*Harrison v. Vose*, 50 U. S. 372, 378) It has been said that a sensible construction should be placed on an act, so as to avoid oppression, absurd consequences or flagrant injustice. It will be presumed that Congress intended to avoid results of such character. (*United States v. Kirby*, 7 Wall. (74 U. S.) 482, 483-487; *United States v. American Trucking Ass'ns*, 310 U. S. 534) Where a statute is susceptible to two constructions "by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter." (*United States v. Delaware & Hudson Co.*, 213 U. S. 366, 408) The argument of the Government and of the court below requires this Court to place an unreasonable construction upon the act. Additionally it raises "a succession of constitutional doubts" as to such interpretation.—*Hariman v. Interstate Commerce Comm'n*, 211 U. S. 407, 422.

The interpretation of the Department of Justice is narrow, unreasonable and discriminatory. It undermines the intent of Congress. It flouts the history of fair treatment of conscientious objectors. It twists the words of the law for the purpose of illegally pulling an unpopular religion outside the protection of the law. Congress did not intend any such un-American and unscriptural discrimination. It frames mischief by unequal protection of law, condemned by the law of God and of man.—*Psalm 94: 20; Taffs v. United States*, 8th Cir., 1953, 208 F. 2d 329.

It is respectfully submitted that the recommendation by the hearing officer and the Department of Justice to the appeal board is illegal, arbitrary and capricious, and

jaundiced and destroyed the appeal board classification upon which the order to report was based.

### **CONCLUSION**

It is respectfully submitted that this Court should find that there is no basis in fact for the denial of the conscientious objector status by the appeal board. This Court should also conclude that the act and the regulations did not authorize the Department of Justice to recommend to the appeal board that self-defense is basis in fact for the denial of the conscientious objector status. The judgment of the court below should be reversed and the cause should be remanded to the district court with directions to enter a judgment of acquittal.

Respectfully submitted,

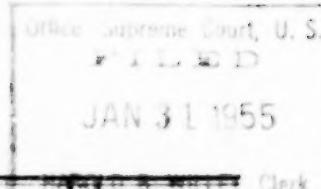
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November, 1954

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# Supreme Court of the United States

OCTOBER TERM, 1954

**No. 250**

**ANTHONY TONY SICURELLA,**

*Petitioner*

v.

**UNITED STATES OF AMERICA,**

*Respondent*

ON PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

## REPLY BRIEF FOR PETITIONER

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[NOTE: Unusual length of this reply brief for petitioner is not due to repetition of argument made in the main brief. In its brief respondent went out of the record and injected a speculative reliance by the appeal board on "theocratic warfare," presented for the first time in these proceedings. This required an entirely new argument for petitioner that could not be anticipated and put in petitioner's main brief. Also, respondent misinterprets various publications of Jehovah's Witnesses, which necessitates quoting them at length. Some of these have been printed as appendixes to this reply brief. Hence the length of this reply brief is entirely justified by the position taken by respondent.]

**MICRO**  
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**CARD**  
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# Supreme Court of the United States

OCTOBER TERM, 1954

No. 250

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ANTHONY TONY SICURELLA,

*Petitioner*

v.

UNITED STATES OF AMERICA,

*Respondent*

---

ON PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

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## REPLY BRIEF FOR PETITIONER

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MAY IT PLEASE THE COURT:

The points in the brief for the United States that need replying to will be considered in the order in which they are stated in that brief. There are some fundamental errors underlying the entire brief that need to be mentioned first.

## I.

## FUNDAMENTAL ERRORS.

The respondent has completely omitted a discussion on the second question presented by the petition. The question is whether the recommendation by the Department of Justice, that petitioner's belief in self-defense was the ground for a denial of the conscientious objector status, was legal. This point is not out of the case, regardless of what may be said about the first question in the petition. The question about the illegal recommendation stays in. Reliance by the appeal board upon this erroneous theory of law invalidated the classification.—*Annett v. United States*, 10th Cir., 1953, 205 F. 2d 689; *Taffs v. United States*, 8th Cir., 1953, 208 F. 2d 329; *United States v. Close*, 7th Cir., 1954, 215 F. 2d 439 (now pending on certiorari, No. 447, October Term, 1954); *Hinkle v. United States*, 9th Cir., 1954, 216 F. 2d 8 (now pending on certiorari, No. 448, October Term, 1954); *Clementino v. United States*, 9th Cir., 1954, 216 F. 2d 10; *Batelaan v. United States*, 9th Cir., Dec. 17, 1954, — F. 2d —; *Shepherd v. United States*, 9th Cir., Dec. 13, 1954, — F. 2d —; *Affeldt v. United States*, 9th Cir., Dec. 14, 1954, — F. 2d —; *Clark v. United States*, 9th Cir., Dec. 3, 1954, — F. 2d —; *Goetz v. United States*, 9th Cir., 1954, 216 F. 2d 270; *United States v. Bortlik*, M. D. Pa., 1954, 122 F. Supp. 225; *United States v. Sage*, D. Neb., 1954, 118 F. Supp. 33.

The respondent has illegally imported a new question into the case that was not considered by the Department of Justice, the appeal board or the lower courts. It is that beliefs of petitioner in theocratic warfare bar him from classification as a conscientious objector. This same argument was urged upon this Court in *United States v. Taffs*, No. 576, October Term, 1953; certiorari denied 347 U. S. 928 (1954). The contention was not considered to be of sufficient merit to authorize a review in that case. As will be shown later the position still has no merit. But it has no

position in this case, because neither the draft boards nor the courts below relied upon it. This Court, therefore, ought not to consider the argument at this time and broaden the issue beyond what it was in the court below.

The appeal board wrote no reason for its denial of the conscientious objector status. The Department of Justice wrote a letter to the appeal board and stated its one and only reason for which the status should be denied to the petitioner. Under the doctrine of regularity of administrative proceedings it is presumed that the appeal board limited its denial to this stated reason. (*United States v. Close*, 7th Cir., 1954, 215 F. 2d 439 (pending on certiorari, No. 447, October Term, 1954); *Clementino v. United States*, 9th Cir., 1954, 216 F. 2d 10; *Shepherd v. United States*, 9th Cir., Dec. 13, 1954, — F. 2d —; *Affeldt v. United States*, 9th Cir., Dec. 14, 1954, — F. 2d —; *Batelaan v. United States*, 9th Cir., Dec. 17, 1954, — F. 2d —) This Court must speculate illegally along with the respondent that the appeal board based its denial upon the belief in theocratic warfare. This is especially true where the appeal board made no memorandum and only one reason was stated by the Department of Justice in its recommendation. (*United States v. Hagaman*, 3d Cir., 1954, 213 F. 2d 86; *Ypparila v. United States*, 10th Cir., Dec. 22, 1954, — F. 2d —; *Reel v. Badt*, 2d Cir., 1944, 141 F. 2d 845) Courts cannot speculate on what is basis in fact.—*Dickinson v. United States*, 346 U. S. 389 (1953).

It is submitted that this Court ought not to follow the respondent out of the record and speculate to consider whether the appeal board relied upon a belief in theocratic warfare as a basis for denial of the conscientious objector status.

The entire argument of respondent consists of an analysis and weighing of the religious views and reasons of Jehovah's Witnesses for their objection to participation in military training and service. The respondent uses many pages of its brief in an effort to get this Court to act as a

religious hierarchy to determine what is orthodox in the field of religious conscientious objections to war. This Court cannot weigh, evaluate and compare religious beliefs.—*United States v. Ballard*, 322 U. S. 78, 85-88 (1944); *Watson v. Jones*, 13 Wall. (80 U. S.) 679, 727, 728-729 (1871); *Kedroff v. St. Nicholas Cathedral*, 344 U. S. 94 (1952).

In describing the religious beliefs of Jehovah's Witnesses to the Court, the respondent has misinterpreted them. Respondent has culled out of the articles published in *The Watchtower* parts here and there. It then takes them out of their context and places a false meaning upon them. Specific instances of this will be shown later. The plain meaning of the articles from their four corners cannot thus be perverted by this illegal method of considering documents.—*United States v. One Book Ulysses*, 2d Cir., 72 F. 2d 705; *Schaefer v. United States*, 251 U. S. 466, 482 (1920).

The record and the publications relied upon by respondent do not support what it has told the Court. They contradict what it stated about the beliefs of petitioner. The documents show genuine conscientious objection to participation in military service.

In several parts of its brief the respondent recognizes the presence of the word "participation" in the statute. But the over-all impression obtained from respondent's brief is that little or no importance is given to the word. It seems that respondent has read the statute so as to omit completely the word "participation." With this vital word left out of the statute the meaning is changed to support the interpretation given to it by respondent. Respondent reads the statute so as to make the objections apply to war and all wars and not to *participation* therein. But when the word "participation" is put back into the statute, where Congress put it, the conscientious objection is seen to be limited to direct participation in military training and service. In this position petitioner, who objects to "participation," comes under the law. The objection need not extend

to war or to all wars, but only to *participation* therein.—*Taffs v. United States*, 8th Cir., 1953, 208 F. 2d 329; *United States v. Hartman*, 2d Cir., 1954, 209 F. 2d 366; *Jessen v. United States*, 10th Cir., 1954, 212 F. 2d 897.

## II.

### QUESTION UNDULY LIMITED.

The respondent limits the question to whether there was basis in fact for the denial of the conscientious objector status. (See page 2 of respondent's brief.) There is also presented to this Court for determination another question. (See page 2, *supra*, this reply brief.) It is whether the recommendation that belief in self-defense was a basis in fact for the denial of the conscientious objector status violated petitioner's rights to procedural due process of law. See *Shepherd v. United States*, 9th Cir., Dec. 13, 1954,—F. 2d —, where it is said: "We think that a hearing before a Department of Justice proceeding upon an erroneous theory as to what constitutes opposition to 'participation in war in any form,' is no better than no hearing at all." That quotation applies here and presents to this Court the second question for consideration. It is one of denial of procedural due process and not one of classification as contended by respondent.

## III.

### COMMENTS UPON THE STATEMENT OF FACTS.

In footnote 2, page 6 of respondent's brief, petitioner is said to be inconsistent in giving his employment while attending high school as a full-time student. [R. 51-53, 78-79] There was no inconsistency, because obviously he had the job after school hours. It is speculation to say that the board relied on this. No mention is made of it by the boards or by the hearing officer. The issue of good faith of

petitioner on this or any other ground was never challenged by the administrative agency.

In footnotes 3 and 7, pages 6 and 10, respondent emphasizes the difference in dates of ordination. These differences related to the ministerial claim, which is not involved here. They are not material to the conscientious objector claim. Neither the boards nor the Department of Justice raised any point about these differences. It should be remembered that the sincerity of petitioner as a conscientious objector was not challenged. The denial of the status was based solely upon petitioner's belief in self-defense. It is too late to raise this point for the first time. It requires illegal speculation to consider this as basis in fact.

Emphasis is placed upon the statement in the questionnaire about the physical condition of petitioner. (See page 7 of respondent's brief.) This was not considered by the boards or the Department of Justice. It is not shown that what he stated was false. Just because he was accepted for service on physical examination does not prove these answers false. This fact is immaterial to the question to be considered by the Court. The fact that he did not claim Class IV-F is significant of his good faith.

In footnote 5, page 7 of respondent's brief, it is implied that petitioner did not appear at the hearing. This suggestion is contrary to the draft board practice. The board must indicate in the minutes a failure to appear. (*United States v. Hufford*, M. D. Pa., 1952, 103 F. Supp. 859) The showing in the minutes on the date for the appearance that a letter was written to the State Headquarters of Selective Service about Jehovah's Witnesses proves that he did actually appear.

Emphasis is placed (pages 8 and 9 of its brief) by the respondent upon the failure of petitioner to indicate in the questionnaire and early papers that he claimed conscientious objections. Petitioner explained why he did not timely request a special form for conscientious objector. [R. 19] While a formal request for the form was not made until

February 5, 1951, he had previously indicated to the board that he was a conscientious objector. [R. 69-70, 72, 73, 74] According to the draft board practice it is not necessary to sign or file a special form for conscientious objector. If the objection appears in any answer or paper it is the board's duty to consider it.—See Local Board Memorandum No. 41 at pages 29-30 of petitioner's main brief.

The respondent is in no position to claim or suggest a waiver of the conscientious objector claim or lack of good faith. The local board waived the late filing when it gave him the form and later reopened and reconsidered his case with the form in the file. (*United States v. Vincelli*, 2d Cir., 1954, 215 F. 2d 210; affirmed on petition for rehearing, 1954, 216 F. 2d 681) Neither the boards nor the Department of Justice relied upon the tardy filing of the claim. It is too late for respondent to suggest it now. The suggestion is not relevant because the good faith of petitioner is not an issue in this case.

The respondent places emphasis (pages 10 and 11 of its brief) on petitioner's appealing to the appeal board for a ministerial classification and not mentioning his conscientious objector status. Under the regulations the appeal board must consider the case *de novo*. It is unnecessary for a registrant to assign all the claims he is making in his appeal. (*Tung v. United States*,) 1st Cir., 1944, 142 F. 2d 919; *Cox v. Wedemeyer*, 9th Cir., 1951, 192 F. 2d 920; *Pine v. United States*, 4th Cir., 1954, 212 F. 2d 93) Appeals are informal and registrants are not to be treated as though they are litigants represented by counsel.—*Tung v. United States, supra; Berman v. Craig*, 3d Cir., 1953, 207 F. 2d 888, 891.

## IV.

## CLAIMED MISINTERPRETATION OF SELF-DEFENSE.

It is stated (pages 13, 15-17, 25 of respondent's brief) that petitioner considers the denial of the conscientious objector status and the approval thereof by the courts below to be because of his "personal" self-defense. Perhaps petitioner was not so clear as he should have been in his main brief. Petitioner did not and does not limit his argument to "personal" self-defense. He extends his assault against the determinations to employ the word "self-defense" in its broadest sense and in the sense that is commonly known. In this sense the word "self-defense" includes, therefore, the right to defend, in addition to oneself, a wife, a child, a brother, a Christian brother, one's property or a church.

Petitioner argued in his main brief and he argues here that he was denied the conscientious objector status, and the courts below approve such denial, because the record shows his willingness to defend himself as well as his brothers and his church. Neither the Department of Justice nor the courts below held that personal defense of oneself was no basis in fact for a refusal of the status. No distinction of disclaimer of reliance upon personal self-defense was made by the Department of Justice or the court below. The denial of the status was based upon both personal self-defense and general self-defense, including defense of the church.

The Department of Justice based its denial on personal defense and defense of others. The use of "in defense of his ministry" by the Department included personal self-defense. [R. 101] When it employed the words "in defense of his fellow-brethren" the Department showed that it included his above-stated personal defense as well as the defense of others in the faith. [R. 101] The full answer of petitioner about self-defense and defense of others should be read by this Court. [R. 77, 82] This answer is in accord-

ancee with the official organ of Jehovah's Witnesses.—See pages 62-63 of respondent's brief.

The court below used the term "self-defense" to include "personal" self-defense as well as defense of others. [R. 112-113] It held that each "is incompatible with a claim of conscientious objection to participation in war" and that petitioner's statements on the subject are "an appropriate factor for the board to consider when ruling on his claim." [R. 113]

Since neither the Department nor the court below isolated personal self-defense from willingness to defend others it is impossible for the respondent to do it here for the first time. But assuming that personal self-defense can be isolated, it is immaterial and makes no difference.

In a similar case this Court has considered whether a general verdict of guilt is illegal because it was based on erroneous parts of a general charge. It has said that the possible proceeding on an erroneous theory could not be isolated from the good in order to sustain the verdict. The Court reversed in such situations.—*Stromberg v. California*, 283 U. S. 359 (1931); *Terminiello v. City of Chicago*, 337 U. S. 1 (1949).

"We think that a hearing before a Department proceeding upon an erroneous theory as to what constitutes opposition to 'participation in war in any form,' is no better than no hearing at all."  
—*Shepherd v. United States*, 9th Cir., Dec. 13, 1954, — F. 2d —.

It should be remembered that judicial review is narrow and strict in draft cases. There must be a strict compliance with procedural due process, prohibiting proceedings upon erroneous legal theories.—*N. L. R. B. v. Cherry Cotton Mills*, 5th Cir., 1938, 98 F. 2d 444, 446; *United States v. Zieber*, 3rd Cir., 1947, 161 F. 2d 90; *Bejelis v. United States*, 6th Cir., 1953, 206 F. 2d 354; *Walker v. United States*, 6th Cir., 1953, 206 F. 2d 354; *United States v. Graham*, N. D. N. Y., 1952, 108 F. Supp. 794.

Petitioner does not agree to the attempted narrowing of the issue of self-defense in order to exclude consideration of self-defense, since neither the agency nor the courts below excluded personal self-defense from view. But even if it were excluded, petitioner still stands by every argument that is made by him on personal self-defense. It is as applicable to his right to defend others, showing he should not lose his conscientious objector status.

Neither the law of the land nor the law of God limits the right of defense to personal self-defense. Congress did not make any such limitation. In the absence of something specific in the act segregating personal self-defense from general self-defense, it cannot be done by the Court. That would be judicial legislation contrary to the principle of "equal justice under law."

## V.

### CONFUSION OF UNWILLINGNESS TO PERFORM CIVILIAN WORK IN THE NATIONAL INTEREST.

The respondent erroneously argues that petitioner misinterpreted the holding of the court below concerning petitioner's refusal to do civilian work. (See pages 16-17 and 32-37 of respondent's brief.) Petitioner has stated that the court below found basis in fact for denial of the conscientious objector status because he objected to performance of civilian work "that substitutes for military service." [R. 113] The refusal to do civilian work because petitioner was "no part of the world" [R. 78, 82-83] was basis for the statement by the court below that petitioner objected "to any and all obedience to secular authority." [R. 113] It is plain that the interpretation placed upon the holding of the court below by petitioner is correct. The construction put by respondent on the holding is wrong.

The position taken by respondent is inconsistent with the view taken by the Department of Justice in its recommendation to the appeal board. In such recommendation

the refusal to perform civilian work was not raised. It was not involved in the administrative proceedings. The Court must speculate to say that the draft boards relied upon this belief of petitioner. It should not be considered here for that reason.

Should the Court consider the argument here, notwithstanding the failure of the administrative agency to rely upon it, what petitioner has said in his main brief answers, in a general way, the argument made by respondent.—See main brief of petitioner, at pages 32-40.

## VI.

### MISCONCEPTIONS IN RESPONDENT'S POINT FOR ARGUMENT.

In its point respondent says that the objection of petitioner "to war is not total but is subject to reservations." (See the brief, page 17.) This statement is completely erroneous. If given any weight it will result in the Court's being misled and the petitioner's being denied "equal justice under law." Petitioner's willingness to use force to defend himself and "kingdom interests" does not mean he will serve in the armed forces of any nation. The contrary appears, as will be shown later. It appears that he will not engage in carnal warfare in Jehovah's army. The record shows that he has bona fide religious objections to military training and service. The respondent has not denied this. But by religious rationalization and misinterpretation of the record and of petitioner's religious beliefs the false contention is made in the point. The erroneous part of the point should be disregarded.

It is also stated in the point that petitioner's primary objection is "directed against interference with" his "religious activity." This is not a fair statement and is a misinterpretation of petitioner's full statements appearing in the record. The over-all conscientious objection included this ground but was not limited to it. He based his objection on other grounds appearing in the record. But these have

been illegally ignored by respondent in its point for argument. The total beliefs of petitioner, mentioned later in this brief, should be considered.

## VII.

### STATUTE DOES NOT EXTEND TO OPPOSITION TO WAR BUT CONFINES IT TO OBJECTION TO PERSONAL AND DIRECT PARTICIPATION IN MILITARY TRAINING AND SERVICE.

It is stated that the act limits conscientious objector status to those who are "specifically and unconditionally opposed to any form of warfare." (See page 17 of respondent's brief.) The respondent fails to state that the objection mentioned in the statute extends no further than to "participation in" warfare. The act "specifically and unconditionally" confines the objection to direct "participation" in military training and service. With emphasis placed on "participation" the true meaning is obtained.

Along with the legislative history that is in footnotes 10, 11, 12, 13 and 14, on pages 18-22 of respondent's brief, the Court is requested to read the legislative history appearing at pages 38-39 of petitioner's main brief. Read also the legislative background material appearing in the brief for petitioner in *Gonzales v. United States*, No. 69, October Term, 1954, at pages 28-30. When the brief was written in each of the three cases to be argued along with this case the *Gonzales* case was first on the calendar. But since then counsel agreed on placing this *Sicurella* case first for argument. This shift in the calendar arrangement makes necessary the reference to material in the *Gonzales* case.

The legislative material citing *Berman v. United States*, 9th Cir., 156 F. 2d 377, 382, referred to at the top of page 20 of respondent's brief shows a congressional intent to confine the conscientious objector privilege to "religious training and beliefs." It was because of this that Congress defined religious training and belief. It said: "it means an

individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation." It is significant that the facts in petitioner's case bring him squarely within the provisions of the part of the act quoted here.

The citation of *Berman v. United States*, 9th Cir., 156 F. 2d 377, 382, by the congressional committee in its report, was merely for the purpose of showing that the committee disapproved *United States v. Kauten*, 2d Cir., 1943, 133 F. 2d 703, which permitted a political objector to claim the benefits of a conscientious objector. Because of this the Congress amended the language of the 1940 act by adding that religious training and belief "does not include essentially political, sociological, or philosophical views or a merely personal moral code." The United States Court of Appeals for the Ninth Circuit has said that the conscientious objections of Jehovah's Witnesses are not a "merely personal moral code" but are based on "religious training and belief."—*Blevins v. United States*, No. 14,189, Nov. 26, 1954, — F. 2d —.

The respondent states (footnote on page 22 of its brief) that "members of Jehovah's witnesses would not be entitled to exemption if this provision of the 1917 act had remained in effect." This is not a correct statement in view of the provisions of that act quoted immediately before such statement. The reason is that their "religious convictions are against . . . participation" in war, which was the alternate provision of that law. It should be remembered that Jehovah's Witnesses were officially classified as conscientious objectors under the 1917 act. Since they were also opposed to noncombatant training and service, as well as combatant service, they suffered in military prisons.—Read the report by Harlan F. Stone for the Board of Inquiry to President Wilson. See also *The Watchtower* of January 15, 1918, appearing as Appendix A to this brief.

The 1940 act and the present act provided for an elimination of the "convictions . . . against war" and based the

status on objection to participation in military training and service, combatant and noncombatant, based on religious training and belief. Jehovah's Witnesses were squarely within the conscientious objector terms of the 1917 act, as well as the present law.

The quotation in the footnote on page 22 of respondent's brief from *Conscription of Conscience*, referring to a statement by the president of the legal governing body of Jehovah's Witnesses, does not present the whole truth. Jehovah's Witnesses had declared their conscientious objections to participation in war. (See the pamphlet *Neutrality*, Appendix B, accompanying this brief, published in 1939 by the Watchtower Bible and Tract Society.) The whole truth and nothing but the truth about the views of Jehovah's Witnesses, as conscientious objectors, was presented in an important letter to the Department of Justice from general counsel for Jehovah's Witnesses. A copy of that letter as published in *Consolation* magazine on October 30, 1940, is printed as Appendix C, pages 43-59, below, this reply brief. Many copies of this magazine reprint of the letter are in the conscientious objector hearing files of the Department of Justice.

The statement made by the president of the Watchtower Society, referred to in the footnote on page 22 of respondent's brief, is fully explained in the letter to the Department of Justice (Appendix C) under the heading "Selective Draft." The statement from *Conscription of Conscience*, referred to by respondent, was not that Jehovah's Witnesses did not have conscientious objections. It was that Jehovah's Witnesses were not told what to do if, as and when they were ordered to do military or civilian service under the act. Had the president said that the governing body gave "any instruction or command" as to "any particular course of action" to take, it would have stated falsely that the society and its officers had violated the conspiracy section of the act. (See *Gara v. United States*, 6th Cir., 1949, 178 F. 2d 38; affirmed per curiam 340 U. S. 857 (1950); and

*Baxley v. United States*, 4th Cir., 1943, 134 F. 2d 610.) The statement referred to in the footnote of respondent's brief does not suggest the true attitude of the legal governing body of Jehovah's Witnesses.

The statement made by respondent on page 23 of its brief that "general unwillingness" is no basis for conscientious objection is correct only if religious training and belief is omitted. If objection is based on religious training and belief in the Supreme Being it would be a valid objection under the act, even though a "general unwillingness" to leave religious pursuits may be included in the objection.

The statement at the bottom of page 23 of respondent's brief about "whose objection to war is conditional" is not entirely accurate. If a person has no objection to God-directed wars in the Bible but maintains staunch conscientious objections to participation in all wars between the nations of this evil world, based on religious training and belief in the Supreme Being, then such "conditional" objection does not forfeit his legally secured conscientious objection to participation. Certainly Congress did not mean that the Christian conscientious objector must violate his faith and belief in the wars that God has approved in His Word, the Bible. The Christian does not have to oppose Scriptural warfare.

## VIII.

### ERRORS IN SAYING PETITIONER'S STATEMENTS ABOUT SELF-DEFENSE AMOUNTED TO AGREEMENT TO PARTICIPATE IN WARFARE.

Respondent illegally and erroneously attempts to broaden the belief of petitioner in self-defense and defense of his Christian brothers into an agreement to participate in armed warfare. This is a gross misinterpretation of the record. Please read what petitioner told the board. [R. 77, 82] He was asked: "under what circumstances, if any, do you believe in the use of force?" He answered:

"Only in the interests of defending Kingdom interests, our preaching work, our meetings, our fellow brethren and sisters and our property against attack. I (as well as all Jehovah's Witnesses) defend those when they are attacked and are forced to protect such interests and scripturally so. Because in doing so we do not arm ourselves or carry carnal weapons in anticipation of or in preparation for trouble or to meet threats.

R. 78] In doing so I try to ward off blows and attacks only in defense. I do not use weapons of warfare in defense of myself or the Kingdom interests. I do not retreat when attacked in my home or at meeting places, but will retreat on public or other property and shake the dust off my feet; so not giving what is holy to dogs and not throwing my pearls before swines. (Matthew 10: 14 & 7: 6) So I retreat when I can do so and avoid a fight or trouble. Also following the admonition at Acts 24: 16, which states 'In this respect, indeed, I am exercising myself continually to have a consciousness of committing no offense against God and man.' " [R. 82]

Concerning these quoted statements of petitioner, the respondent says that they "would involve more than individual self-defense, and contemplated such mass use of force as could be nothing less than warfare." (See the brief at pages 25-26.) Then (footnote 18 on page 26 of respondent's brief) respondent refers to a part of petitioner's above-quoted statement on the use of force about not using weapons. Respondent then defiantly states that petitioner did not mean what he said but probably meant something else. It is falsely suggested that petitioner would use force and weapons in "future outright warfare if the future 'Kingdom interests' are served by participation therein." This last statement in that footnote is flouting the holding of this Court in *Schaefer v. United States*, 251 U. S. 466,

482 (1920). There this Court condemned illegal governmental cutting up of a document and pasting it back together again, as in this case, in a different arrangement in order to produce a new and different meaning to support its argument, contrary to truth and the record.—See also *United States v. One Book Ulysses*, 2d Cir., 72 F. 2d 705.

The material appearing in the appendix to the respondent's brief at pages 62-63 correctly presents petitioner's views. There his position on self defense and defense of Kingdom interests clearly does not contemplate mass warfare or participation in any kind of mass rebellion. There it is stated that Jehovah's Witnesses "do not use weapons of warfare in defense of themselves or the Kingdom interests. (2 Cor. 10:4)" This part of appendix to respondent's brief impeaches what respondent says at pages 25-27 of its brief.

The position taken here by respondent is diametrically opposed to that taken by the Solicitor General in the petition for writ of certiorari in *United States v. Taffs*, No. 576, October Term, 1953; certiorari denied March 15, 1954, 347 U. S. 928. (See the quoted part of this petition at page 50 of the main brief for petitioner in this case.) In that petition the Solicitor General, on a draft board record identical to this, stated that the government took the position that such statements about self-defense and defense of the Kingdom interests were no basis for the denial of the conscientious objector status.

The record in the *Taffs* case shows that the same article from *The Watchtower* on theocratic warfare printed in the appendix to respondent's brief in this case was relied on. (See the *Taffs* record at pages 72-94.) Material identical to that which appears on pages 62-63 of respondent's brief in this case, concerning self-defense and defense of the Kingdom interests, appears on page 85 of the *Taffs* record.

In the special form for conscientious objector filed by petitioner in this case substantially the same statement on the use of force was made as was made by *Taffs* in his

special form. (See the *Taffs* record at page 58.) There it is stated:

"5. Under what circumstances, if any, do you believe in the use of force?

"When God authorizes me to fight with force. The Bible indicates four occasions in which a Christian may use force. 1. In defense of their ministry. 2. In defense of their fellow Witnesses. 3. In defense of his own life. 4. To protect his own home against crime or violence."

Respondent says in footnote 16, page 25, that personal self-defense is a "far cry" from defense of the Kingdom interests. From the brief in general and at these places in particular the impression is gained that respondent does not consider that self-defense is basis for a denial of the conscientious objector status. At least it is not argued at any place in the brief that personal self-defense is basis in fact for the refusal of the conscientious objector status.

The position taken by respondent concerning the difference between personal self-defense and willingness to defend others is unreasonable. Neither the law of the land nor the law of God limits the right of defense to oneself. It extends the right to the defense of one's family, church and Christian brothers. (See the argument, *supra*, at pages 8-10, under the heading "Claimed Misinterpretation of Self-Defense.") Unless and until Congress makes a split in the right of defense in order to take away defense of others and leave only personal self-defense for the conscientious objector, it cannot be done here. To do so would make judicial legislation contrary to law.

## IX.

ATTEMPTS TO SEGREGATE AND MINIMIZE BIBLE QUOTATIONS  
SUPPORTING CONSCIENTIOUS OBJECTION IMPROPER.

It is stated by respondent (contrary to the record) that petitioner merely listed a half dozen scriptures to support his stand as a conscientious objector. Actually fourteen different scriptures are cited or quoted in the conscientious objector form, many of which consist of several different verses. [R. 77-83] Elsewhere other scriptures are cited and quoted. [R. 63, 69, 73, 89, 91] It is said that these scriptures related to his ministry. They were not expressly confined to the ministry claim. But even so they also supported his objections to military service that were conscientious. Under the Local Board Memorandum No. 41 (see pages 29-30 of the main brief) it was necessary for the board to consider these, even though they did not appear in his conscientious objector form. The draft boards are not to deal with a registrant as though he were a litigant represented by counsel.—*Berman v. Craig*, 3d Cir., 1953, 207 F. 2d 888, 891.

Respondent argues that petitioner is not a conscientious objector because he did not cite or quote the Bible verse from Exodus 20:13: "Thou shalt not kill." (See page 27 of respondent's brief.) This assumes that Congress has cut an orthodox path through the Bible and fixed the scriptures on which a conscientious objector should rely. Such argument is ridiculous.—See pages 28-29 of Brief for Petitioner, in No. 69, October Term, 1954, *Gonzales v. United States*, a companion case to this one.

At this point it is interesting to note the unfair addition and use of Exodus 23:31 by the respondent in footnote 19 of its brief on page 27. It is said that petitioner intended to rely on this because he cited Exodus 23:32. Each scripture deals with a different subject. The unreasonableness of this type of unfair argument is now demonstrated. Suppose petitioner should have above said that respondent

also should have cited Exodus 20:12, which deals with a different subject also. It requires petitioner to honor his father and mother. This scripture would be relevant argument against respondent if we are to adopt and pursue the unreasonable sophistry appearing in footnote 19 on page 27 of respondent's brief.

The respondent (pages 28-32 of its brief) roams into the forbidden field of judging religious beliefs. It criticizes the conclusions reached by Jehovah's Witnesses as a result of their religious training and belief.

The argument is that because petitioner and Jehovah's Witnesses do not have pacifistic beliefs like the peace churches, they are not covered by the law. The main reason for which this argument should be rejected is that it attempts to weigh the correctness of religious beliefs. This is outside the jurisdiction of the draft boards, the Department of Justice and the courts.—*United States v. Ballard*, 322 U. S. 78, 85-88 (1944).

The expression of the religious views of Jehovah's Witnesses by the legal governing body of the group, the Watchtower Bible and Tract Society, Inc., in the magazine *The Watchtower*, relied on by respondent, is an ecclesiastical determination. This religious administrative determination cannot be questioned in secular tribunals. It must be accepted as a genuine bona fide statement of conscientious objection to war. The ecclesiastical determination is binding on the draft boards, the government and the courts.—*Kedroff v. St. Nicholas Cathedral*, 344 U. S. 94 (1952); *Watson v. Jones*, 13 Wall. (80 U. S.) 679, 727, 728-729 (1871); *Gonzalez v. Archbishop*, 280 U. S. 1, 16-17 (1929).

The Court cannot compare this statement of belief with the pacifistic beliefs of other religions and thus determine whether the beliefs fit the statute. The 1940 act and the present act rejected the pacifism or peace-church definition of the 1917 act. To do this would convert the Court into a heresy tribunal. To reject religious beliefs on conscientious objection by comparison of Jehovah's Witnesses

with other religious beliefs is in violation of the First Amendment to the United States Constitution.

All that the Court can inquire about is confined to what the act says. An individual is a conscientious objector entitled to the benefits of the law if he shows (1) that he believes in the Supreme Being, (2) his belief imposes obligations higher than those owed to the state, (3) he opposes both combatant and noncombatant military service, and (4) his beliefs are not political, sociological or philosophical but are based on belief in God.

The quotation from *The Watchtower* (Appendix to respondent's brief at pages 44-76) and the other references to publications of Jehovah's Witnesses, on pages 30-32, do not present the full and true views of petitioner and Jehovah's Witnesses appearing in the documents quoted from.

The misunderstanding and misinterpretation of the record and views of Jehovah's Witnesses are shown in the use of the quotation from the magazine *The Watchtower*, at pages 28-32 of respondent's brief. The record and the publication relied upon by respondent do not support what respondent says about the publications. They contradict what respondent says. They should be read. They show genuine conscientious objection to participation in any war that is fought between the nations of this world.

The trouble with the argument of respondent in its consideration of the religious views of petitioner appearing in the publications is that it does not attempt to gather the meaning of each of the articles relied upon by petitioner from its entirety. Parts of the articles and bits of the record are cut away from their natural setting. Then a colored meaning, different from the true intent of the writer and speaker, is wrapped around the isolated pieces. This process of determining the meaning of written documents has been condemned.—*United States v. One Book Ulysses*, 2d Cir., 72 F. 2d 705.

It is the responsibility of a reader to judge a document not according to parts of the document that can be cut out

and considered apart from the context. The obligation of a judge is to ascertain the intent of the author after reading the entire document. The articles appearing in the magazine *The Watchtower* and the book *The New World* do not support the conclusion reached by respondent. Had the respondent applied the proper rule of law about interpretation of documents a different conclusion would have been reached.

The rule of proper interpretation of literature has been stated by Mr. Justice Brandeis in *Schaefer v. United States*, 251 U. S. 465, 482 (1920) :

“The nature and possible effect of a writing cannot be properly determined by culling here and there a sentence and presenting it separated from the context. In making such determination, it should be read as a whole.”

The wrong done by the above deliberate misinterpretation of what Jehovah's Witnesses believe is compounded by the epitome of a low grade of hearsay opinion or a miserably erroneous summary of the book entitled “The New World,” by the authors of *Conscription of Conscience*, quoted in footnote 23 on pages 30-31 of respondent's brief. The unfairness is exacerbated by the false statement that Jehovah's Witnesses say, in *The New World*, that they “can, without conscientious scruple, participate” in Armageddon. The best answer to this misinterpretation is to quote *The New World* itself. It states that the enemies of Jehovah God say that Jehovah's Witnesses will fight against the nations of this world. Then the book adds:

“To such let those foregoing words of the inspired apostle be the authoritative answer that the true Christians who witness for Jehovah and His new world are not fighting men and have no fight with them or their visible governments. The fight of Jehovah's witnesses is now and ever since

the days of Abel has been with the demons, the promoters of religion.

\* \* \*

"Has the Job class [Jehovah's Witnesses] an 'arm like God' to fight the battle of Armageddon and to abase the proud, tread down the wicked, and hide their carcasses in the dust? If so, then, says Jehovah, 'will I also confess unto thee that thine own right hand can save thee.' ([Job] 40: 9-14) The Job class cannot break the power of this world and overthrow it; they cannot destroy the 'beast' or his 'image' or the Papal Hierarchy machine, nor save themselves from Satan's organization. It is Jehovah's arm and his 'right hand,' Christ Jesus, that deliver them from the demon rule and the nations gone totalitarian. Armageddon is HIS battle for the vindication of his name, and no creatures on earth will fight it for him. The remnant and their companions must depend and wait upon the vindication of Jehovah's name by the execution of all enemies. The Job class cannot by their own power crush the persecutions, oppositions, and violence by the religionists and allies. At the same time, to try to escape the fiery furnace of affliction by bargaining with the enemy and compromising with the world, God's enemy, would bring them under demon influence and under Jehovah's sentence of destruction. Almighty God is the only Deliverer, by Christ Jesus, and he delivers primarily for his name's sake those who keep integrity."—*The New World*, Brooklyn, N. Y., Watchtower Bible & Tract Society, Inc., 1942, pp. 51-52, 313-314.

Nine copies of this book, *The New World*, are being filed with the Clerk of this Court as Appendix D to this brief, for the consideration of the Court.

It is therefore to be seen that the statement appearing at the top of page 31 of respondent's brief, that the literature is "to establish the Jehovah's Witness as one who does not oppose war but simply reserves the right to determine which war is the one of which Jehovah approves" for their participation in flesh and blood killing, is patently untrue.

On page 24 of its brief respondent says that it "would not urge denial of petitioner's status as a conscientious objector if his utterances disclosed nothing more than a willingness to participate in some hypothetical spiritual conflict of Jehovah and his angels against Satan." This statement attempts to lead this Court to the belief, as does also the misleading footnote 23 above discussed, that petitioner and Jehovah's Witnesses contend that they will participate in the battle of Armageddon.

Jehovah's Witnesses and petitioner do not believe that they will participate in the warfare at Armageddon. They merely stand still, turn not a hand but sing the praises of Jehovah, as when Jehovah caused Moab, Ammon and Mount Seir to be destroyed, and when Gideon and his band surrounded the host of Midian. (2 Chronicles 20; Judges 7) Then they watch the destruction of Jehovah's enemies, Satan and his supporters, at Armageddon. (See the quotation from *The New World, supra*, pages 22-23.) This is also shown in the appendix to respondent's brief in this case, at pages 40-76.—Read the summary appearing in the brief for petitioner in *Witmer v. United States*, No. 164, October Term, 1954, at pages 29-32.

The precise nature of the participation by Jehovah's Witnesses in theocratic warfare (present preaching and legal fighting to preach) and their part in Armageddon is also shown in *The Watchtower*, issue of November 15, 1954, at pages 684-703. This issue of the magazine accompanies this reply brief and is identified as Appendix E.

"<sup>15</sup> . . . This spiritual priesthood may not sanction their engaging in violent combats among themselves at the temple of Jehovah God or en-

gaging in violent combat with outsiders at the battle of Armageddon.—Hag. 2:7-9, AS; Jas. 4:1-4.

"<sup>16</sup> Our joint warfare must accordingly be a spiritual warfare. And for this both flocks of us must take up the same God-given suit of armor in obedience to the command: 'Stand firm, therefore, with your loins girded about with truth, and having on the breastplate of righteousness, and with your feet shod with the equipment of the good news of peace. Above all things, take up the large shield of faith, with which you will be able to quench all the wicked one's burning missiles. Also accept the helmet of salvation, and the sword of the spirit, that is, God's word, while with every form of prayer and supplication you carry on prayer on every occasion in spirit. And to that end keep awake with all constancy and with supplication in behalf of all the holy ones, also for me, that ability to speak may be given me with the opening of my mouth, with all freeness of speech to make known the sacred secret of the good news, for which I am acting as an ambassador in chains, that I may speak in connection with it with boldness as I ought to speak.'—Eph. 6:14-20, NW.

"<sup>17</sup> With this suit of armor you can now be a peaceful resident of earth, harming no blood and flesh, and at the same time carry on a theocratic spiritual fight against the wicked spirit forces in the heavenly places that use their earthly human dupes to try to stop freeness of speech in preaching the good news with boldness. The 'sword of the spirit,' or spiritual sword, is God's Word. With it you can do no bodily violence to anyone, but, instead, immense spiritual good. A Korean War general recently said, 'The pen is mightier than the sword,' meaning the literal

sword. In turn the Word of God is mightier than the pen of worldly men, and hence is mightier than the literal sword. The apostle Paul also said that the alive Word of God ‘exerts power and is sharper than any two-edged sword.’ (Heb. 4:12, NW) Why, then, should we who are sanctified to the sacred, theocratic warfare lift up a less mighty, an inferior weapon against one another any more? Why should we not use the mightier sword, the superior weapon, the spiritual sword, the Word of God, against our common enemy, the ‘wicked spirit forces in the heavenly places’? Our mightiness in war lies in weapons from God, and these only we may use.

\* \* \*

<sup>“<sup>19</sup></sup> Here, then, we stand in the wicked day, clad in theocratic armor, sanctified for the sacred warfare in Jehovah’s cause. We are facing the universal war of Armageddon. That will be the most violent and disastrous fight of all human experience. But we shall not need to take part in the violence of that time. From the ancient prophetic pictures of Armageddon come the words of Jehovah to us: ‘The battle is not yours, but God’s.’ ‘Stand firm and see the salvation of Jehovah, which he will perform for you today. . . . Jehovah will himself fight for you.’ (2 Chron. 20:15; Ex. 14:13, 14, NW) Those words are a prohibition against our then dropping our spiritual armor and taking up carnal weapons and relying upon their use for or against anyone on earth at the battle of Armageddon. We must keep our sanctification for our sacred warfare down to the all-out attack upon our New World society by Gog the sovereign prince of Magog and the outbreak of Armageddon by Jehovah’s countermove against him in our defense. (Ezek. 38:1 to 39:22, AS,

margin) Our High Priest Christ Jesus has offered his human sacrifice for us by which we gain a sanctified condition before God for our spiritual conflict. We have consulted the will of God by means of him and have learned that we must 'contend for victory in the right contest of the faith.' (1 Tim. 6: 12, NW) We know we must each prove to be a 'right kind of soldier of Christ Jesus.' He as our High Priest is with us in the camp to counsel us and to encourage us not to fear the enemy but to move forward doing God's will as theocratic soldiers. Our warfare for Jehovah's glory and vindication is a holy warfare, a sacred obligation, a sanctified duty, and our Christian conscience finds no objection to engaging in this theocratic warfare in holy armor, but we eagerly enlist in this service as loyal volunteers.—Ps. 110: 3, AT.

"<sup>20</sup> Our camp we must keep clean by living holily, committing no fornication with this enemy world, that Jehovah may see nothing indecent among us and turn away from accompanying us. Clad in the spiritual armor of God, we must continually fight now against the 'wicked spirit forces in the heavenly places,' valiantly wielding the 'sword of the spirit, that is, God's word,' by preaching in all the inhabited earth the good news of God's established kingdom. Then as the decisive battle nears, yes, even as we enter the 'war of the great day of God the Almighty,' we as a 'holy nation' and 'royal priesthood,' together with all our companion warriors of good will from all nations, will be worthy to sing Jehovah's praises and to blow the trumpets for a courageous advance against the foe with full confidence that Jehovah will give us the victory. And as we fight on in support of the preaching of the good news we will

pray fervently in faith for one another and for the success of the divine cause. Then our theocratic warfare will not be in vain. No, but it will be garlanded with God's own victory by Christ and with eternal life in the righteous new world for us as sharers in His victory! (1 Cor. 15: 57, 58. NW) 'The battle is not yours, but God's.'—2 Chron. 20: 15, AS."—*The Watchtower*, November 15, 1954, pp. 701-703, ¶¶ 15-17, 19-20.

The trouble caused to this Court by the erroneous interpretation of the religious beliefs of Jehovah's Witnesses by the respondent calls to mind what counsel stated to this Court on page 2 of his brief for respondent in opposition in *United States v. Taffs*, No. 576, October Term, 1953:

"Taking this case in for review will mean an extensive and unnecessary heresy hearing in this Court on the religious beliefs of Jehovah's Witnesses, which have been made final and unreviewable by this Court through an ecclesiastical determination and the First Amendment to the United States Constitution."

The difficulty of one accustomed to orthodox views to be able to evaluate accurately a strange religion or the religion or the religious views of a minority (especially of a widely hated and despised group like Jehovah's Witnesses) is very well demonstrated by the errors of interpretation of that religion's doctrines, committed by the respondent in its brief. These would have been avoided had respondent observed the command of *United States v. Ballard*, 332 U. S. 78, 85-88 (1944); *Watson v. Jones*, 13 Wall. (80 U. S.) 679, 727, 728-729 (1871); and *Kedroff v. St. Nicholas Cathedral*, 344 U. S. 94 (1952). It is most unfortunate that respondent has fallen into this miry pit of error.

The wrong construction placed on the religious beliefs of Jehovah's Witnesses by respondent (pages 28-32 in its brief) is the same misinterpretation of the religious beliefs

of Jehovah's Witnesses that was attempted by the Government in its petition for writ of certiorari in *United States v. Taffs*, No. 576, October Term, 1953. (Read pages 12, 14-16 of that petition.) The same misrepresentation of the religious beliefs of Jehovah's Witnesses was challenged in the brief for respondent in opposition, at pages 12-14. This Court denied the writ: 347 U. S. 928 (1954).

Footnote 24 (page 31 of respondent's brief) is incorrect. It leads to the impression that *Taffs v. United States*, 8th Cir., 1953, 208 F. 2d 329 (certiorari denied 347 U. S. 928 (1954)) and all the decisions following it did not properly appraise the literature misinterpreted by the respondent. It is said that those courts erred when they truthfully found that theocratic warfare in which Jehovah's Witnesses participate is not a real war between nations but is a spiritual war or preaching or legal fighting to preach. The various courts of appeals that have considered the identical literature and the same statements appearing in the conscientious objector form have made the same interpretation of the publications as has petitioner. How can all those courts be wrong and the respondent right? (Read *Taffs v. United States*, 8th Cir., 1953, 208 F. 2d 329 (cert. denied 347 U. S. 928).) The other courts following it decided *United States v. Hartman*, 2d Cir., 1954, 209 F. 2d 366; *Jessen v. United States*, 10th Cir., 1954, 212 F. 2d 897; *United States v. Close*, 7th Cir., 1954, 215 F. 2d 439 (pending on certiorari, No. 447, October Term, 1954); *United States v. Wilson*, 7th Cir., 1954, 215 F. 2d 443; *Shepherd v. United States*, 9th Cir., No. 14,105, Dec. 13, 1954, — F. 2d —; *Ashauer v. United States*, 9th Cir., No. 14,304, Dec. 21, 1954, — F. 2d —; *Pitts v. United States*, 9th Cir., No. 14,164, Dec. 7, 1954, — F. 2d —; *United States v. Hagaman*, 3rd Cir., 1954, 213 F. 2d 86; *Bateiaan v. United States*, 9th Cir., No. 13,939, Dec. 17, 1954, — F. 2d —; *Clark v. United States*, 9th Cir., No. 14,176, Dec. 3, 1954, — F. 2d —; *Hinkle v. United States*, 9th Cir., 1954, 216 F. 2d 8 (pending on certiorari, No. 448, October Term, 1954). The first four

of the last above-cited cases following *Taffs* should be read by the Court.

## X.

### PETITIONER'S BELIEFS NOT QUALIFIED AND HIS RELIANCE UPON INTERFERENCE WITH RELIGIOUS ACTIVITIES ONLY ONE REASON FOR HIS CONSCIENTIOUS OBJECTIONS.

The respondent erroneously states that petitioner's objection is not "objection to war." (See respondent's brief, pages 32 and 35.) This position of respondent ignores that the statutory objection is "to participation in" military training and service. It is not required to be a broad religious objection to war as such. His objection is to training and service and is based on religious training and belief in the Supreme Being. That meets the statute and throws out the erroneous argument of respondent.

Also, respondent wrongly states that the sole basis of petitioner's objection is any service "that will take him away from the time he chooses to devote to his religious activities." (See brief at page 32. It is again stated in a little different way at the bottom of page 35 and at the top of page 36.) This argument of respondent does not present the whole of petitioner's entire objection.

Many other reasons appear in the article from *The Watchtower* appearing as an appendix to respondent's brief, the pages of which shall now be mentioned. The many grounds stated in the appendix to respondent's brief are: (1) conscience instructed in the scriptures, page 58; (2) sermon on the mount, page 58; (3) love your enemies, page 59; (4) no retaliation according to Jesus and Paul, pages 59-60; (5) killing limited to burglary at nighttime, pages 61-62; (6) covenant with God, page 64; (7) belong through ransom to Jesus, who did not enlist in army of Rome, pages 64-65; (8) cannot render to Caesar what belongs to God, page 65; (9) as Jesus said, since no part of this world, cannot fight, pages 67-68; (10) must be un-

spotted from this evil world, page 68; (11) Paul said Christians must even submit to plundering of armies rather than resist by armed warfare, pages 68-69; (12) must claim exemption from military service as did Levites because Christians are modern-day Levites, pages 69-70; (13) Christian ambassadors of God's kingdom are ordered exempt from warfare with nation where sent, pages 71-72; (14) weapons of Christian soldiers engaged in spiritual warfare against demons limited to sword of spirit, the Bible, pages 72-73; (15) brotherhood of witnesses throughout world and cannot kill brothers in other countries, page 74; (16) war requires to hate brothers, which is murder, page 75; (17) obliged to preach and cannot stop it, page 75.

Reasons specifically mentioned by petitioner were: (1) in army of Christ [R. 77]; (2) weapons not carnal; not authorized by Christ to engage in carnal warfare of this world [R. 77, 81]; (3) cannot desert Christ's army for an army of this world [R. 82]; (4) must render unto Caesar what is Caesar's but God's things to God [R. 82]; (5) cannot serve God and man [R. 63]; (6) Jesus' kingdom not of this world [R. 65, 82]; (7) must preach in all the world [R. 63]; (8) must do unto others as you would have them do unto you [R. 63].

After listing the above reasons petitioner told the board: "I am letting you know that I conscientiously object to serving in any military establishment or any civilian arrangement that substitutes for military service." [R. 82-83]

It is erroneously stated that the court below aptly summarized the above stated reasons. (See respondent's brief, page 32.) The trial court summarized nothing. It merely relied upon petitioner's concluding statement that he opposed civilian work as well as military as a basis for his "objection to any and all obedience to secular authority." [R. 113] The court below not only failed to summarize but also disregarded completely all of petitioner's reasons showing his religious training and belief in the Supreme Being.

Respondent relies upon the decision in *White v. United*

*States*, 9th Cir., 1954, 215 F. 2d 782; and *Tomlinson v. United States*, 9th Cir., 1954, 216 F. 2d 12. It quotes extensively from the *Tomlinson* opinion on page 34 of its brief. The doctrine of the *White* and *Tomlinson* cases has been specifically limited to cases in which the registrant was classified as a conscientious objector opposed only to combatant service (I-A-O). *White* and *Tomlinson* were thus classified.

The Court of Appeals for the Ninth Circuit has held that where, as here, the registrant has not been classified as a noncombatant conscientious objector but as one liable for unlimited training and service, the opposition to all secular authority is no basis for the classification. (*Franks v. United States*, 9th Cir., 1954, 216 F. 2d 266) This case may well be a *sub silentio* overruling of that part of the opinion in *Tomlinson v. United States*, 9th Cir., 1954, 216 F. 2d 12, quoted in respondent's brief at page 34, even in cases where the registrant is classified in I-A-O. It should be remembered that the holding of the court in *Tomlinson v. United States, supra*, has been challenged by a petition for writ of certiorari pending in this Court.—See No. 391, October Term, 1954; see also petition for writ of certiorari in *White v. United States*, No. 390, October Term, 1954.

The opinions in *White v. United States*, 215 F. 2d 782, and *Tomlinson v. United States*, 216 F. 2d 12, both pending on petitions for writs of certiorari, have been considerably trimmed down by the Court of Appeals for the Ninth Circuit. Nothing is left to the two opinions except the patently erroneous grounds complained of in the petitions for writs of certiorari.—See the Supplemental Memorandum for Petitioner in *White v. United States*, No. 390, October Term, 1954.

In *Hinkle v. United States*, 9th Cir., 1954, 216 F. 2d 8, 10 (pending on certiorari in this Court, No. 448, October Term, 1954), the court found no basis in fact for the denial of the conscientious objector status. The court said that the denial "was not based upon any personal appearance of Hinkle."

The court also (but later) in *Pitts v. United States*, 9th Cir., No. 14,164, Dec. 7, 1954, — F. 2d —; qualified its holding in this *White* case. There the court held that because nothing in the memorandum of personal appearance made by the board showed that the credibility of Pitts was questioned by the local board, the case had to be determined by the papers in the file alone. The court said: "We have therefore before us a situation which requires the application of the principle applied in the *Dickinson* case." The court found no basis in fact for denial of the conscientious objector status.

The same holding was made by the court in *Affeldt v. United States*, 9th Cir., No. 13,941, Dec. 14, 1954 — F. 2d —. There the court found no basis in fact for the denial of the conscientious objector status. The court said: "At any rate, nothing about the papers filed by Affeldt or in his personal appearance before the local board, would appear to warrant any finding of insincerity, sham or fakery in his claim that he was conscientiously opposed to participation in war in any form."

More recently, in *Ashauer v. United States*, 9th Cir., No. 14,304, decided December 21, 1954, — F. 2d —, the court held that it was necessary for the local board to show in its memorandum something to indicate a finding of insincerity. The court said: "If anything which occurred at that interview, including Ashauer's demeanor or the manner in which he conducted himself, was inconsistent with or derogative of his avowal of conscientious objection, there is no hint of it in the board's memorandum regarding the interview." The court then relied upon *Dickinson v. United States*, 346 U. S. 389 (1953); *Schuman v. United States*, 9th Cir., 1953, 208 F. 2d 801; *Jessen v. United States*, 10th Cir., 1954, 212 F. 2d 897; and *United States v. Close*, 7th Cir., 1954, 215 F. 2d 439 (No. 447, October Term, 1954, in this Court). The *Schuman* case, *supra*, was criticized in footnote 4 of the opinion in the *White* case.—See page 26 of the petition for writ of certiorari in *White v. United States*,

No. 390, October Term, 1954; compare *Simon v. United States*, 9th Cir., No. 13,942, Dec. 17, 1954, — F. 2d — (pending on petition for writ of certiorari, No. 526, October Term, 1954).

## XI.

### FAILURE TO SIGN CONSCIENTIOUS OBJECTOR BLANK.

A big point has been made of petitioner's not signing the Series XIV in the questionnaire, requesting the special form for conscientious objector. (See respondent's brief, page 35.) No inference can be drawn against the petitioner on account of this failure. He explained his reasons. [R. 19] Local Board Memorandum No. 41, issued by the Director of Selective Service System, excused petitioner from signing it. (See petitioner's main brief, pages 28-31.) The respondent is not to regard a registrant before a board as a litigant represented by counsel. (*Berman v. Craig*, 3rd Cir., 1953, 207 F. 2d 888, 891) No claim of waiver because of delay was made by the administrative agency. The giving of the form to him on a belated request and the subsequent consideration of the claim (as though it had been timely made) stops respondent from making anything of the failure to ask for the conscientious objector form in the questionnaire. —*United States v. Vincelli*, 2d Cir., 1954, 215 F. 2d 210; affirmed on petition for rehearing, 1954, 216 F. 2d 681.

## XII.

### URGING MINISTRY CLAIM BEFORE CONSCIENTIOUS OBJECTOR CLAIM.

Emphasis is put upon petitioner's giving primary consideration to his ministry claim over and above his conscientious objector claim. This argument is rejected by *Clementino v. United States*, 9th Cir., 1954, 216 F. 2d 10; *Cox v. Wedemeyer*, 9th Cir., 1951, 192 F. 2d 920; *Pine v. United States*, 4th Cir., 1954, 212 F. 2d 93.

### XIII.

#### COURT OF APPEALS DECISIONS NOT SUBJECT TO CRITICISM MADE BY RESPONDENT.

It is made to appear that the different courts of appeals deciding the cases relied upon by petitioner, criticized by respondent on page 38 of its brief, followed the dissenting view of Mr. Justice Murphy in *Cox v. United States*, 332 U. S. 442, 457-458 (1947).

As will be shown later, the courts of appeals did not do what respondent says. It is significant that no application was made to this Court for a petition for writ of certiorari in the cases where the opinions stated the words "substantial evidence." These statements were inadvertently made. The respondent did not seek a correction of the error that is now complained of by petitions for rehearing or by petition for certiorari.

It is said that the term was used in *Taffs v. United States*, 8th Cir., 1953, 208 F. 2d 329, certiorari denied 347 U. S. 928 (1954). The Court of Appeals did not so hold. At the end of the opinion it is said: "There being no evidence in the record sustaining the finding of the board that appellant was not conscientiously opposed by religious belief to participation in war in any form, its order was void." That court previously quoted from *Estep v. United States*, 327 U. S. 114 (1946): "The question of jurisdiction of the local board is reached only if there is no basis in fact for the classification which it gave the registrant."

The same quotation from the *Estep* case is made in *Annett v. United States*, 10<sup>th</sup> Cir., 1953, 205 F. 2d 689. There the Court of Appeals said, at the end of the opinion:

"Since the record is devoid of any evidence sustaining the finding of the board that Annett was not a member in good faith of Jehovah's witnesses, possessed of an honest religious conviction against participation in war, the judgment cannot stand."

In *United States v. Hartman*, 2d Cir., 1954, 209 F. 2d 366, the court cited *Estep v. United States*, 327 U. S. 114, and *Dickinson v. United States*, 346 U. S. 389 (1953). The court then concluded: "Since there is no basis in fact for the I-A classification which was finally given appellant, the order to report for induction was a nullity." It is plain, therefore, that the quoted language (at the bottom of page 38 of respondent's brief) from the lower court that decided this case, saying that these above-mentioned cases were based upon the substantial evidence rule, rather than the no-basis-in-fact rule, is not correct.

The only opinion that is subject to the charge made by the court below and the respondent is *United States v. Pekarski*, 2d Cir., 1953, 207 F. 2d 930. No petition for rehearing was filed by the Government. The respondent made no application for a writ of certiorari to this Court. Even that court used the term "substantial evidence" inadvertently. The words follow immediately after the citation of the case establishing the no-basis-in-fact rule: *Estep v. United States*, 327 U. S. 114. The Court of Appeals, moreover, applied the no-basis-in-fact rule notwithstanding the inadvertent error. The court said that "the local board had no evidence before it to support the classification of the registrant."

The same quibbling attack against these and other opinions was presented by the Government to the Court of Appeals for the Eighth Circuit in *DeMoss v. United States*, No. 15112, decided on December 29, 1954, now pending on appellant's petition for rehearing based on other grounds. The court rejected the contention of the Government. It said concerning *Jewell v. United States*, 6th Cir., 1953, 208 F. 2d 770, as follows:

"If the term 'substantial evidence' as used in the *Jewell* case was used in the same sense of being substantial in comparison with evidence contradictory thereto, in our opinion it would be in conflict with the express direction of the *Dickin-*

son case which states: 'Nor will the courts apply a test of "substantial evidence." ' But if the term is used in the sense that there need be only sufficient factual indication in the record incompatible with the registrant's claim of exemption to prevent the board's order from being legally arbitrary and capricious, the use of the terminology 'substantial' harmonizes with the criterion laid down by the Supreme Court. We place the latter construction on the term where we find it in opinions dealing with this question."

### **CONCLUSION**

For the reasons set forth above, and for those appearing in the main brief, it is respectfully submitted that the judgment of the court below should be reversed.

Respectfully submitted,

HAYDEN C. COVINGTON

124 Columbia Heights  
Brooklyn 1, New York

*Counsel for Petitioner*

January, 1955.

## APPENDIX A

[Excerpt from the *Watch Tower* magazine of January 15, 1918, pp. 24-25.]

### REGARDING MILITARY EXEMPTION

Quite a number of our brethren in different parts of the country have been denied military exemption. Some of them, because of their refusal to engage in military service, have been court-martialed and sentenced to long terms in prison, while others are held in detention camps in different parts of the country. Those attending the Convention felt it incumbent upon them to express their love and sympathy in support of these dear brethren who are so loyally standing for the principles represented by our Association; and it was deemed proper to pass a resolution relating to the matter. A committee previously appointed for that purpose reported a resolution on Sunday morning, which was read before the Convention and, upon motion, was seconded and unanimously adopted. The resolution follows:

### RESOLUTION

"WHEREAS, under the terms of the Selective Draft Act a number of our members and brethren have been called to military duty, and under the terms and provisions of said Selective Draft Act have made application to the proper authorities for discharge or exemption from military service, which right or privilege has been denied many of them, and they have been and are now forcibly restrained of their liberty in either military prisons or army detention camps;

"AND WHEREAS, we believe our position as a religious organization, which has been organized and existing for many years prior to the passage of said Act, is not fully understood by various officers and representatives of the United States Government, and that it is due and proper that we should make a statement as to the position of this

religious organization that the attitude of our said members and brethren may be better understood;

**"NOW THEREFORE RESOLVED:** By the members of the INTERNATIONAL BIBLE STUDENTS ASSOCIATION in annual convention assembled at Pittsburgh, Pennsylvania, composed of delegates representing our Association from all of the United States and Canada, that we make the following statement of our said Association or organization concerning our attitude and the attitude of our members toward the present great war:

**"FIRST.** That we recognize in President Wilson a great man who is using his power and influence honestly and conscientiously and according to his best judgment in the interests of the peoples of the world and particularly of the United States.

**"SECOND.** That we recognize the duty of every one living within the realms of the United States to be law-abiding; that the Congress of the United States, representing the people of the nation, placed a provision in the Selective Act that no person should be compelled to engage in military service who is a member of a well-recognized religious organization or association whose teachings or principles forbid its members to engage in war, or who are against war in any form; that in taking the position they do, our members are claiming only the protection the law provides against violation of conscience.

**"THIRD.** That we are followers of the Great Master, Christ Jesus our Redeemer, and have covenanted with the Lord to do His will; and that we are certain that it is not His will that we, as His followers should participate in the great war now upon the earth. We recognize in the present great war one that is different from any other war ever before known, to wit: That it marks the end of the world—that is to say, the end of the present evil order of things—and is purging the nations and preparing the way for the Kingdom of God for which followers of the Great Master, Christ Jesus, have prayed for many centuries; and that for forty

years past this Association has held and taught that the year 1914 would mark the beginning of this great international conflict which the Prophets of the Lord foretold must take place, immediately preceding the establishment of the everlasting Kingdom of Righteousness.

"We agree with President Wilson that there can be no lasting peace while the present unrighteous systems exist.

"FOURTH. We hold that the teachings of Jesus and the Apostles forbid all His true followers to engage in mortal combat or war; that early in the Christian era this teaching was departed from by those claiming to be His followers and that for many centuries past the clergy of both Catholic and Protestant church systems have departed from the teachings of Jesus and the Apostles, substituting therefor man-made doctrines, and have taught the Divine right of kings to rule and that the kingdoms of this earth constitute the kingdom of the Lord, and have mixed the religion of Jesus Christ with the polities of the world, which has resulted in confusion amongst Christian peoples, and which the Lord denounces as Babylon and as an abomination in His sight; that the Lord through many of His holy Prophets foretold that such an alliance would result between civil and ecclesiastical powers on earth which would bring upon both the indignation of God, causing wars, revolutions and anarchy, which would be overruled by Him for the purging of the nations of the earth to the end that He might establish amongst the people a pure and righteous government.

"FIFTH. With charity to all and malice toward none, we feel it our duty humbly to call attention to the fact that the nations are now passing through that great crisis foretold by the Prophets of the Lord, and that God is expressing His displeasure toward the relationship existing between ecclesiastical and civil kingdoms of the earth, particularly as set forth in the following cited Scriptures, to wit: Revelation, chapters 17 and 18; Ezekiel, chapter 34.

"SIXTH. That sincerely believing such to be true, a participation by our members in this war would be contrary

to the Lord's will and a violation of our own conscience which would put in jeopardy our eternal destiny and welfare. While we hold that it is the privilege of any and all persons to engage in war who desire to do so if they are not followers of Jesus Christ, yet we hold that they who do follow faithfully in His footsteps cannot consistently participate in war in any form; and we have so held for more than thirty years.

"SEVENTH. We, therefore, enter our solemn protest against the incarceration of our brethren and members in prison because of the refusal on their part to violate their conscience and to violate the law of God; that we respectfully call upon the officials of the Government of the United States to recognize that the members of our Association come clearly within the purvue and terms of the exemption clause of the Selective Draft Act because of the teachings and principles of this religious Association, which principles and teachings have been held and taught by it and its members for more than a quarter of a century; and that we respectfully petition and ask that our said brethren and members, to wit:

Herm. Abraham, Holyoke, Mass.  
 Martin O. Bowin, Camp Upton  
 Harold Bruber, Camp Dodge  
 A. W. Christy, Jr., Camp Upton  
 Elmer Christy, Camp Upton  
 Jerry De Cecca, Camp Devens  
 Stanley Dixon, Camp Bowie  
 Frank Donogrio, Camp Dix  
 Charles Feldner, Camp Meade

Charles H. Walker, Camp Zachary Taylor

Joy Ferguson, Camp Upton  
 Stanley Olson, Camp Grant  
 George Ruiz, Camp Upton  
 Walford Marker, Seattle, Wash.  
 Walter Moze, Camp Upton  
 J. A. Mureh, " Zachary Taylor  
 Camelo Nieita, Camp Deven  
 S. Papageorges, Duluth, Minn.  
 H. Pound, Camp Zachary Taylor

and others, be fully granted the provisions of the exemption clause of the Selective Draft Act as provided by Congress.

"That a copy of this Resolution be furnished to the President of the United States, to the Secretary of the War Department and the Provost Marshal General Crowder; and that the President of our Association appoint a committee of three to so present these resolutions."

## PRESENTED TO PRESIDENT WILSON

Brother Rutherford, as President, thereupon appointed Brother Dr. Smith of Louisville, Ky., Brother E. D. Sexton, of Los Angeles, California, and Brother E. W. Brenneisen, of New York City, as a committee of three to bear these resolutions to Washington and there in person present them to President Wilson, Secretary Baker of the War Department, and a copy to Provost Marshal General Crowder. The Committee proceeded to Washington for this purpose, and on Friday, January 11th, they were granted an audience with President Wilson. The Committee was very kindly and graciously received by the President who patiently listened to the reading of the resolution. The President expressed himself as fully sympathizing with our position. He suggested that some had exceeded their authority in dealing with our brethren and promised that these mistakes should be speedily rectified. Afterwards a copy of the resolution was presented to Secretary of War Baker and Provost Marshal Crowder.

What effect this resolution may have we cannot of course know, but it is our hope that much good may result. While our brethren are refusing to render military service they are not doing so because of any desire to be against the Government but because they are conscientious and believe that for them to engage in this great war would be to forfeit their share in the Kingdom of our Lord and Saviour Jesus Christ. Having made a consecration to be dead with Christ, all such count not the present life dear unto themselves. They desire above all things to be pleasing to the Heavenly Father and to do His will completely.

For the encouragement of our dear brethren in bonds we remind them of the great afflictions endured by the faithful ones of the past as recorded by the Apostle Paul in Hebrews 11. Those men proved their loyalty and faithfulness to God, and because thereof they will have a better resurrection than the world in general. Now some of His

dear children are having the privilege of proving their loyalty under somewhat similar circumstances, and if faithful, will have the privilege, together with the King of Kings and Lord of Lords, of reconstructing the world of mankind which is now engaged in the destruction of each other. What a blessed privilege that will be!

### **APPENDIX B**

[The booklet *Neutrality* accompanies this reply brief and is marked as Appendix B.]

### **APPENDIX C**

[This is a copy of an original letter handed by the General Counsel for Jehovah's Witnesses to Mr. L. C. M. Smith, Assistant Attorney General, Washington, D. C., in October of 1940. It was published in *Consolation* magazine, October 30, 1940, pp. 24-30.]

#### **An Important Letter to the Department of Justice**

Department of Justice,  
Attention Mr. L. C. M. Smith,  
Assistant to the Attorney General,  
Washington, D. C.

Dear Sir:

On the 4th inst. you requested me to come to your office at Washington and confer with you relative to Jehovah's witnesses and their relationship to the Selective Draft and to furnish you with information which the Department desires. To be sure, I shall be glad to co-operate with your office in any way I can. I am the legal counsel for some of Jehovah's witnesses but I am not well qualified to furnish you with the desired information; accordingly I have obtained from the official publishers for Jehovah's witnesses

the information which I believe you desire and I submit the same as you have requested, to wit:

The WATCH TOWER BIBLE & TRACT SOCIETY was incorporated under the laws of the State of Pennsylvania in 1884. The purpose of that organization is as stated in its charter, a copy of which is attached. In 1909 the PEOPLES PULPIT ASSOCIATION was incorporated under the laws of the State of New York, the name of which was afterwards changed to the WATCHTOWER BIBLE AND TRACT SOCIETY, INC.

The INTERNATIONAL BIBLE STUDENTS ASSOCIATION was incorporated in 1914 under the laws of Great Britain. The purpose of the three above-mentioned corporations is exactly the same. The officers are practically the same. The three corporations named are publishers for Jehovah's witnesses. They print and manufacture literature used by Jehovah's witnesses, and which publications are issued in about eighty different languages and dialects. All members and officers of the corporations above mentioned are Jehovah's witnesses and all have one objective and purpose.

'Jehovah's witnesses as such are not a corporation, for the obvious reason as appears from the facts relating thereto. Jehovah's witnesses form a part of the organization of Almighty God, whose name alone is Jehovah. [Note: In furnishing this information the informant cites the Bible scriptures as authority for making such statement.] No earthly body of people could have the control of Jehovah's witnesses; for the reason, they are all under the immediate control of the Lord of heaven and earth. Jehovah's witnesses, therefore, are not such an organization over which any man could have and exercise control. The responsibility of Jehovah's witnesses is first to Him, the Almighty God, and each individual is responsible for his own acts. The guide for each one of Jehovah's witnesses is God's word recorded in the Holy Bible. "Sanetify them through thy truth; *thy word is truth.*" (John 17:17) "Thy Word is a lamp unto my feet, and a light unto my path." (Psalm 119:105) "I will instruct thee, and teach thee in the way

which thou shalt go; I will guide thee with mine eye." (Psalm 32:8) "Trust in the Lord with all thine heart; and lean not unto thine own understanding. In all thy ways acknowledge him, and he shall direct thy paths."—Proverbs 3:5, 6.

The Head and Chief of Jehovah's witnesses is the Lord Jesus Christ, who is otherwise known in the Scriptures as the Logos. Another title of Jesus is "The Faithful and True Witness", the beginning of creation. (Revelation 3:14; Revelation 1:5) Jehovah God selects His own witnesses, and this selection began by His selecting of Abel. A list of the faithful men who are witnesses for Jehovah appears in the Bible at Hebrews the eleventh chapter. Those faithful men are cited as examples to be followed by all other witnesses of the Almighty God and concerning which it is written: "Wherefore seeing we also are compassed about with so great a cloud of witnesses, let us lay aside every weight, and the sin which doth so easily beset us, and let us run with patience the race that is set before us, looking unto Jesus the author and finisher of our faith; who, for the joy that was set before him, endured the cross, despising the shame, and is set down at the right hand of the throne of God."—Hebrews 12:1, 2.

A person becomes a witness for Jehovah, according to the Scriptures, in this manner, to wit: By an unconditional agreement or covenant, otherwise called consecration, to do the will of Almighty God, and hence to follow in the footsteps of Christ Jesus: "Then said Jesus unto his disciples, If any man will come after me, let him deny himself, and take up his cross, and follow me."—Matthew 16:24.

The purpose of Jesus Christ in coming to the earth He states in these words: "To this end was I born, and for this cause came I into the world, that I might bear witness unto the truth. Every one that is of the truth heareth my voice." (John 18:37) All persons who do enter into a contract or covenant to do the will of Almighty God are called to 'follow in the footsteps of Christ Jesus' (1 Peter 2:21);

that is to say, they are to do as Jesus does.

'The witnesses of Jehovah are collectively the body of the organization formed by the Almighty God and over which Christ Jesus is the appointed Head and Chief. No man or body of men selects these witnesses; for the reason, they are witnesses of the Almighty God, selected, commissioned and commanded by Jehovah to bear testimony to the truth of God's purpose. That no man has any power or authority to select and appoint Jehovah's witnesses it is written in the Bible: 'Now hath God set the members every one of them in the body, as it pleaseth him.' (1 Corinthians 12:18) The organization of Jehovah's witnesses is therefore the organization of Almighty God, and not that of man. That they are responsible first to Almighty God is plainly stated in the Scriptures. (Romans 14:4) Jehovah God and Christ Jesus are the "Higher Powers" to whom every one of Jehovah's witnesses must be obedient. (Romans 13:1) The monarch, president, leader, dictator or other head or heads of an earthly government are in no sense the higher powers mentioned in the foregoing scripture.

'A state or nation of the earth is an organization formed by men for the government of men. The officers thereof are not the higher powers to those who have become the servants of Almighty God. When the law of a worldly nation or a state conflicts with the expressed law of Almighty God the man who is a witness of Jehovah must obey God's law first because he is in a solemn covenant to be obedient to God's law. It is the duty of a person, however, residing within a state or nation to obey the laws of the land that are not in conflict with God's law. Any rule or law that requires a person who is in a covenant to do God's will and who is therefore a witness of Jehovah to do or perform that which Almighty God expressly commands he shall not do is in conflict with the law of Almighty God. For this reason Jesus states the rule governing Jehovah's witnesses: "Render therefore unto Cæsar [the state] the things which be Cæsar's, and unto God [the Almighty, Jehovah] the things

which be God's." (Luke 20: 25) Such is and must be the guide of every one who is the follower of Christ Jesus and who therefore is a sincere and faithful witness of Jehovah. The apostles of Jesus, who were witnesses of Jehovah, under inspiration of God interpreted this rule with these words: "We ought to obey God rather than men." (Acts 5: 29) That same rule necessarily applies to every person who has entered into a solemn covenant to do the will of Almighty God and who therefore has become a witness of Jehovah.

### ***'Purpose***

'What is the purpose of Jehovah's witnesses? Not to convert the world, because that is an impossibility and it is not their God-given commission. Their purpose and commission is to bear testimony before the peoples of the world that Jehovah is the ALMIGHTY GOD and that His purpose is to set up in full operation *THE THEOCRACY*, which shall rule the world in righteousness and bless with life everlasting, peace and happiness all persons who are obedient to that THEOCRATIC rule. *THE THEOCRACY* is the government of the world under the command of Jehovah God by and under the immediate direction of Christ Jesus the King. The commission and purpose of Jehovah's witnesses, therefore, is to proclaim or transmit this vital information to all persons who will hear the testimony from Jehovah's Word, the Bible. They have no power and no desire to compel anyone to hear or to join themselves to anything. They are merely witnesses transmitting the message of the Almighty God. All such sincere, devoted persons to Jehovah, who are in a covenant to do His will and who have been accepted by Him as such servants, are ordained ministers or witnesses of Almighty God; and since God ordains them, that is the highest ordination or authority that man could have, and such ordination is contained in the following specific rule of the Most High, as set forth in the Bible: "The spirit of the Lord God is upon me; because the Lord

hath anointed me to preach good tidings unto the meek; he hath sent me to bind up the brokenhearted, to proclaim liberty to the captives, and the opening of the prison to them that are bound; to proclaim the acceptable year of the Lord, and the day of vengeance of our God; to comfort all that mourn." (Isaiah 61:1, 2) The ordination given by any earthly organization to a person can merely authorize that person to represent the corporate body or organization issuing such authority.

THE THEOCRACY is the kingdom of JEHOVAH GOD, the ALMIGHTY, and this fact is stressed repeatedly in the testimony of Christ Jesus and who is the Anointed KING. At the time of the beginning of His earthly ministry He said: "The Kingdom of Heaven is at hand," meaning that Jesus himself, being the appointed and anointed King by Jehovah, was then present. His testimony, given over a period of more than three years, repeatedly emphasized the Kingdom of God as that which is of greatest importance to man because it is the means of man's salvation to life and the means of the vindication of Jehovah's great name.

'Jesus commanded all of His followers to continuously pray for the coming of God's Kingdom, which will vindicate God's name and bless all obedient ones of men, and therefore He said: "After this manner therefore pray ye: Our Father which art in heaven, Hallowed be thy name. Thy kingdom come. Thy will be done in earth, as it is in heaven." (Matthew 6:9, 10) For this reason Jesus told the Roman governor: 'I am the King and to this end was I born.' All of Jehovah's witnesses since the time Jesus was on earth till now, that is, all the sincere followers of Christ Jesus, have thus prayed to God with hope, looking for the coming of His Kingdom, when righteousness shall prevail in all the earth.

The prophecies of the Bible, and the corroborating facts, show that Jehovah God enthroned His King, Christ Jesus, in the year A.D. 1914 and sent Him forth to begin His reign while the enemy Satan still operates in the earth.

(Psalm 110:1, 2) The great prophecy set forth in the twenty-fourth chapter of Matthew shows that the beginning of the reign of Christ would be accompanied by the world war, famine, pestilences, distress of nations with much perplexity. All of such things have come to pass or are now in course of fulfillment. For this reason Satan knows that he has but a brief space of time until Armageddon, the final conclusion of the controversy between him and the Almighty God, and therefore it is written: "Woe to the inhabitors of the earth, and of the sea! for the devil is come down unto you, having great wrath, because he knoweth that he hath but a short time."—Revelation 12:12.

Jehovah's witnesses must declare these facts to the people in order that the people who desire righteousness and peace may learn that God's kingdom under Christ is the only hope for lasting peace and life everlasting for human creatures. Such rulers of nations as dictators, Nazis, Fascists and the like, are all against Jehovah God and His kingdom under Christ. Therefore Jehovah, addressing His faithful servants who have made a covenant to do His will, says: "Let all the nations be gathered together, and let the people be assembled; who among them can declare this, and shew us former things? let them bring forth their witnesses, that they may be justified; or let them hear, and say, It is truth. YE ARE MY WITNESSES, SAITH THE LORD, and my servant whom I have chosen; that ye may know and believe me, and understand that I am he; before me there was no God formed, neither shall there be after me."—Isaiah 43:9, 10.

This command must apply to every person who is in a covenant to do the will of Almighty God. For that reason those persons now on the earth and known as JEHOVAH'S WITNESSES must continuously bear testimony of and concerning Jehovah God, His kingdom, and His name, and this they must do in obedience to His commandments. Of necessity the testimony of God's Word exposes the iniquity of this world. Satan the enemy of God, and all of his servants there-

fore, attempts to destroy Jehovah's witnesses, whose sole protection is Jehovah God and His King.—Revelation 12: 17.

'Only such persons of good will toward God need to expect the favor and blessings of the Most High. When Jesus was sent to earth Jehovah's angels authoritatively made this announcement: 'Glory to God in the highest, on earth peace to men of good will.'—Luke 2: 14, *Rotherham*.

Jehovah's witnesses must of necessity be separate and distinct from the world because they are the ambassadors and representatives of God's kingdom on earth, bearing testimony as such ambassadors of and concerning Jehovah and His kingdom. (2 Corinthians 5: 20) They must inform the people that THE THEOCRACY is the only means of bringing peace to the nations of earth, as it is written concerning the King, Christ Jesus, the Prince of Peace: "The government [THE THEOCRACY] shall be upon his shoulder; and his name shall be called Wonderful Counsellor, The mighty God, The everlasting Father, The Prince of Peace. Of the increase of his government and peace there shall be no end, upon the throne of David, and upon his kingdom, to order it, and to establish it with judgment and with justice, from henceforth even for ever. The zeal of the Lord of hosts will perform this." (Isaiah 9: 6, 7) These truths are, of course, important to the peoples of earth, particularly at the present time.

### **\*Number**

'How many are in the company of Jehovah's witnesses? No man can answer that question; for the reason, no man knows. For many centuries God has been selecting His witnesses and giving them opportunity to prove their complete faithfulness to Him and to receive His everlasting blessing. Today the world has reached the greatest crisis of all time and the world is now torn with strife by reason of unrighteousness. This is exactly as the Lord foretold it would be at the time of the coming in of His kingdom, and

concerning which all of His witnesses were commanded to pray. For this reason the Lord gave His servants and witnesses this further commandment: "And this gospel [good news] of the kingdom shall be preached in all the world for a witness unto all nations: and then shall the end come." —Matthew 24:14.

'In this troublesome time millions of persons have heard and are still learning the truth of the Bible of and concerning God's Kingdom. The WATCHTOWER SOCIETY and its kindred societies above named, which are publishers for Jehovah's witnesses, have placed in the hands of the peoples of earth more than three hundred million volumes of books, published in eighty or more languages and distributed amongst the peoples and nations of the earth. The number of persons showing a deep interest in learning of God's Kingdom daily increases. Since no man or organization has authority to keep a roll showing who are or who are not Jehovah's witnesses, there is none such kept. That no man can now tell how many of Jehovah's witnesses are in the earth note the following spoken by God's prophet: "I beheld, and, lo, a great multitude, which no man could number." (Revelation 7:9) The aforementioned societies or corporations that do the publishing for those who are witnesses for Jehovah have no record of the number of such persons who have entered into a covenant to do the will of God; but from the evidence that appears there must be a great number of such persons who are of good will toward God and His kingdom and who have devoted themselves to Him and His service. These devoted ones are to be found in every nation of earth.

#### **'War**

'Do Jehovah's witnesses participate in the wars between the nations of the world? How could one who is wholly devoted to Almighty God, and to His kingdom under Christ Jesus, take sides in a war between nations, both of which are against God and His kingdom? Those persons who are

wholly devoted to God and His kingdom are separate and distinct as a nation from the other nations, and, as stated by the Scriptures, their citizenship is in the heavenly organization (*Philippians 3:20, Diaglott and Weymouth translations*) Concerning such witnesses of Jehovah the Most High it is written in the Bible: "But ye are a chosen generation, a royal priesthood, an holy nation, a peculiar people; that ye should shew forth the praises of him who hath called you out of darkness into his marvellous light." (*1 Peter 2:9*) Their commission and their work is to show forth the praises of Jehovah God and His kingdom and the blessings that such righteous rule will bring to the obedient ones of the peoples of earth.

'No government of the earth is in favor of Jehovah's kingdom under Christ Jesus, but all are against it. No government is advocating the establishment of God's kingdom of righteousness, and hence all are against that Kingdom, as Jesus declares: "He that is not with me is against me." (*Matthew 12:30*) It is written concerning earthly governments, and the people who hold to such, and who indulge in unrighteousness: "The whole world lies under the evil one." (*1 John 5:19, Diaglott*) How then can one who is wholly devoted to Jehovah God and to His kingdom take the side of one nation warring against another nation and indulge in killing his fellow man, and particularly where both such warring nations are against Jehovah God and His King, Christ Jesus? God's Word expressly prohibits and forbids His witnesses to thus indulge in war between the nations of earth. That it is the will of Almighty God, Jehovah, and of His King, Christ Jesus, that Jehovah's witnesses shall not engage in war between the nations of earth and that they are forbidden to so engage therein, the following is cited from the Scriptures, and which is addressed specifically to those consecrated persons who follow in the footsteps of Christ Jesus, to wit: "For though we walk in the flesh, we do not war after the flesh: (for the weapons of our warfare are not carnal, but mighty

through God to the pulling down of strong holds)."—2 Corinthians 10: 3, 4.

### **'Neutrality'**

The position and attitude of Jehovah's witnesses is set forth in the Bible, and is stated in *The Watchtower* published in 1939 in an article under the title "Neutrality", a copy of which article is appended and made a part of this statement.

The entire Bible record and Bible history shows that every one of Jehovah's witnesses from Abel to the present time has refused to take sides and fight for or against a nation that is against God's kingdom. That does not mean that such followers of Christ Jesus are pacifists. Jesus declared that His followers would fight for His kingdom. (John 18:36) Abraham, one of Jehovah's witnesses, was entirely neutral as to the kings of the nations of his time. When those nations entered into war he remained aloof from them and entirely neutral, but when one of those warring nations assaulted Lot, his fellow servant of God, Abraham fought against that nation and delivered Lot, his fellow servant. The Bible record at Hebrews the eleventh chapter shows that all of the faithful men there mentioned with approval were neutral as to controversies between nations, and were entirely and wholly devoted to Almighty God. This point is fully covered in the *Watchtower* article published concerning neutrality, as above stated, a careful reading of which should make clear the position of Jehovah's witnesses now on the earth.

### **'Declarations'**

From the time that the aforementioned corporations have acted as publishers for the witnesses of Jehovah these publications have repeatedly announced the fact that the servants of Almighty God, Jehovah's witnesses, decline to indulge in war between that nations because to do so is against God's commandment, violative of the conscience

of the servants of God, and would lead to the destruction of such servants by Jehovah himself. Some of those Resolutions thus published are attached hereto and made a part of this statement.

### ***'Selective Draft***

'Will the WATCH TOWER BIBLE & TRACT SOCIETY and kindred corporations above named, or any organization or body acting with them, oppose the Selective Draft Act recently passed by Congress? Most emphatically, No; because such is not the prerogative of the Societies named. Claiming exemption from military duty or service by conscientious objectors is an individual matter with each one of Jehovah's witnesses because each one must himself determine whether or not he is wholly devoted to Jehovah God and His Kingdom. The Word of Almighty God expressly forbids any and all persons who are in a covenant to do His will, and who are therefore His witnesses concerning His name and His kingdom, to engage in war on behalf of any nation (or nations) which nation is against the Kingdom of Almighty God. It is an individual matter, however, for each person to determine his devotion to Jehovah and His kingdom, or whether he is a part of this world. The Word of the Lord God Jehovah is higher than the word or commandments of any earthly organization. These commandments are given to such conscientious, faithful servants of Jehovah God: "Keep [yourselves] unspotted from the world." (James 1: 27) "They are not of the world, even as I am not of the world. Sanctify them through thy truth: thy word is truth." (John 17: 16, 17) "These things I command you, that ye love one another. If the world hate you, ye know that it hated me before it hated you. If ye were of the world, the world would love his own; but because ye are not of the world, but I have chosen you out of the world, therefore the world hateth you." (John 15: 17-19) "Love not the world, neither the things that are in the world. If any man love the world, the love of the

Father is not in him." (1 John 2:15) In order for one to prove his love for God and His kingdom he must be a witness to Jehovah's name and His Kingdom in this day of great crisis in the world, as it is written: "Herein is our love made perfect, that we may have boldness in the day of judgment; because as he is, so are we in this world. There is no fear in love; but perfect love casteth out fear; because fear hath torment. He that feareth is not made perfect in love."—1 John 4:17, 18.

### **'Punishment'**

'Would it not be better for Jehovah's witnesses to willingly take non-combatant service in the army and serve there rather than to be incarcerated in prison for refusing to do so? That is a question that each individual must answer for himself. No man or earthly organization has any right to answer for another. If any man desires to enter the military for combatant or even non-combatant service, that is for him to decide and for no one to attempt to influence him. God's Word must be his guide, together with his conscience. The very worst punishment that could be inflicted upon any person by any worldly power is death. Those who fear God but who do no fear man thereby prove their love for God and are assured of His final blessing. For one who has made a covenant to do the will of God and has become a witness for Jehovah, and who for fear of man power breaks his covenant with God is certain to suffer eternal destruction; as it is written: "And fear not them which kill the body, but are not able to kill the soul; but rather fear him which is able to destroy both soul and body in hell."—Matthew 10:28.

'The responsibility for inflicting punishment upon persons who because of their devotion to Almighty God refuse to engage in war or military service rests upon the person or persons who cause such punishment to be inflicted, and their responsibility is to the Most High. The prophet Jeremiah was a faithful one of Jehovah's witnesses because

he stood firmly for the truth of God's kingdom and declared the same openly and boldly. He was imprisoned and threatened with death, and to his accusers Jeremiah replied: "As 'or me, behold, I am in your hand; do with me as seemeth good and meet unto you; but know ye for certain, that if ye put me to death, ye shall surely bring innocent blood upon yourselves, and upon this city, and upon the inhabitants thereof; for of a truth the Lord hath sent me unto you to speak all these words in your ears." (Jeremiah 26: 14, 15) Because he put his trust wholly in Jehovah God the Almighty preserved him alive. Let those who have to do with conscription and the infliction of punishment consider well their own responsibility before inflicting punishment upon one who conscientiously serves Jehovah as His servant and witness, and because that person insists on faithful obedience to God rather than to man.

'In this hour of great distress upon the nations of earth Jehovah's witnesses are engaged solely in bearing testimony before the people that Jehovah is the Almighty, the true God, and that His kingdom under Christ Jesus, called THE THEOCRACY, is the only hope of complete deliverance, peace and life everlasting. Those who thus faithfully perform their covenant with God, and who are His servants and hence His witnesses, being selected by Him, are called His "elect". God will see to it that violence done to His elect shall not go unpunished; as it is written: "And shall not God avenge his own elect, which cry day and night unto him, though he bear long with them? I tell you that he will avenge them speedily. Nevertheless, when the Son of man cometh, shall he find faith on the earth?"—Luke 18: 7, 8.

'Those who deny God because of fear of men, and thereby expect to escape punishment, shall have no resurrection from death but must remain dead forever. Those who remain faithful and true unto Jehovah God and His kingdom, even unto death, trusting wholly in God and His kingdom, are promised instantaneous resurrection from death to life everlasting. (1 Corinthians 15: 15-57) "Be

thou faithful unto death, and I will give thee a crown of life.”—Revelation 2:10.

Jehovah's witnesses are not following the theories, or teachings, or commandments of men or any company or organization of men. They take their orders and commandments only from God, as set forth in His Word. They follow the Lord Jesus Christ, Jehovah's Chief Witness, and they are compelled to be fully obedient to the commandments of Almighty God if they would receive life everlasting, which blessings Jehovah God alone can give, through Christ Jesus.—Romans 6:23.

Neither the WATCH TOWER BIBLE & TRACT SOCIETY nor its kindred corporations above mentioned, nor any officers or servants thereof, will undertake either directly or indirectly to interfere with Selective Draft of persons into the military service. That Jehovah's sincere witnesses are conscientious objectors, duly entitled under the law to military exemption, is clear, but each individual must for himself determine whether or not he will claim exemption and should act upon the advice of no human creature or body of men; as it is written in the Scriptures: “Behold, God is my salvation; I will trust, and not be afraid; for the LORD JEHOVAH is my strength and my song; he also is become my salvation.”—Isaiah 12:2.

### ***'Ordination of Ministers'***

The primary ordination of any person as a minister of God and Christ to preach this gospel of the Kingdom is given by the Lord himself, as it is written in His Word: “The spirit of the Lord God is upon me; because the Lord hath anointed me to preach good tidings unto the meek; he hath sent me to bind up the brokenhearted, to proclaim liberty to the captives, and the opening of the prison to them that are bound; to proclaim the acceptable year of the Lord, and the day of vengeance of our God; to comfort all that mourn.”—Isaiah 61:1, 2.

Every person who has exercised faith in the shed blood

of Christ Jesus as the Redeemer of man, and who has made a full and unreserved covenant to do the will of Almighty God as a follower of Christ Jesus, and who then devotes himself faithfully and sincerely to the worship and active service of God and His King, Christ Jesus, is recognized by the aforementioned Society and body of Jehovah's witnesses to be an ordained minister of God and Christ, who is duly authorized to preach this gospel of the Kingdom of God. Such person so recognized receives authority to represent the aforementioned Society as a minister and as a witness for Jehovah to preach this gospel of the Kingdom, and this constitutes the human ordination of such person. To each of said persons so ordained there is issued and delivered an identification card showing that the person bearing the same is an ordained minister of the gospel.

### ***'Divinity Schools'***

'Not only is the WATCH TOWER BIBLE AND TRACT SOCIETY the publisher for Jehovah's witnesses, but for more than fifty years that Society has had and maintained schools for the instruction of students in the Divine Word, the Holy Scriptures, and daily and regularly at its headquarters it gives personal instruction, and instruction by correspondence, to students of the Divine Word as recorded in the Bible. In addition thereto the said Society has and maintains companies or branch schools in many towns and cities, and which companies or schools are under the immediate direction of competent instructors, elders and ministers and servants, who regularly each week of the year give instruction in the Divine Word, the Bible, and all persons who have covenanted to do the will of Almighty God, and who desire to attend and do attend, are permitted to receive instruction at such schools free of charge.'

I am sure the above statement of the position of Jehovah's witnesses relative to military service is far more explicit than I could make it, and I submit it for your

consideration. I hope this is a compliance with your request.

Dated

October 9, 1940.

[Signed] HAYDEN C. COVINGTON

#### APPENDIX D

[The book *The New World* accompanies this reply brief and is marked as Appendix D.]

#### APPENDIX E

[The November 15, 1954, issue of *The Watchtower* accompanies this reply brief and is marked as Appendix E.]

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No. 250

In the Supreme Court of the United States

OCTOBER TERM, 1954

ANTHONY TONY SICURELLA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE  
SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

SIMON R. SCHLESINGER

Solicitor General,

WARREN OLNEY III,

Assistant Attorney General,

BEATRICE ROSENBERG,

Attorney,

Department of Justice,

Washington 25, D. C.

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# In the Supreme Court of the United States

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UNITED STATES COURT OF APPEALS FOR THE  
SEVENTH CIRCUIT

---

## MEMORANDUM FOR THE UNITED STATES

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### OPINION BELOW

The opinion of the Court of Appeals (Pet. 18-23) is not yet recorded.

### JURISDICTION

The judgment of the Court of Appeals was entered June 15, 1954. The time for filing a petition for a writ of certiorari was extended to August 14, 1954. The petition was filed on July 30, 1954. The jurisdiction of this Court is invoked under 28

U. S. C. 1254(1). See also Rules 37(b)(2) and 45(a), F. R. Crim. P.

**QUESTION PRESENTED**

Whether petitioner's statement, in accordance with the general tenets of Jehovah's Witnesses, that he would fight in defense of "Kingdom interests" but could not submit to any military establishment or substitute civilian service arrangement constituted a sufficient basis for denial of his claim to classification as a conscientious objector.

**STATUTE INVOLVED**

Section 6(j) of the Universal Military Training and Service Act, 62 Stat. 604, 612; 65 Stat. 75, 86 (50 U. S. C. App. 456(j)) provides in pertinent part:

Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. Any person claiming exemption from combatant training and service because of such conscientious objections whose

claim is sustained by the local board shall, if he is inducted into the armed forces under this title, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate \* \* \*. Any person claiming exemption from combatant training and service because of such conscientious objections shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board. Upon the filing of such appeal, the appeal board shall refer any such claim to the Department of Justice for inquiry and hearing. The Department of Justice, after appropriate inquiry, shall hold a hearing with respect to the character and good faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The Department of Justice shall, after such hearing, if the objections are found to be sustained, recommend to the appeal board that (1) if the objector is inducted into the armed forces under this title, he shall be assigned to noncombatant service as defined by the Presi-

dent, or (2) if the objector is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of such induction be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate \* \* \*. If after such hearing the Department of Justice finds that his objections are not sustained, it shall recommend to the appeal board that such objections be not sustained. The appeal board shall, in making its decision, give consideration to, but shall not be bound to follow, the recommendation of the Department of Justice together with the record on appeal from the local board. \* \* \*

#### **STATEMENT**

Petitioner seeks review of the judgment of the United States Court of Appeals for the Seventh Circuit affirming the two-year sentence imposed by the United States District Court for the Northern District of Illinois after trial without a jury on a charge of failure to submit to induction in the armed forces (R. 5, 15-16, Pet. 18-23).

The pertinent facts are as follows:

Petitioner, who was born on June 13, 1927, registered with his local selective service board on Sep-

tember 11, 1948 (R. 51-52). In his classification questionnaire he claimed to be a minister of Jehovah's Witnesses and a student preparing for the ministry (R. 55-56). He also stated that he worked 44 hours per week as a file clerk for the Railway Express Agency (R. 56-57). He did not at that time claim deferment as a conscientious objector (R. 57). He was at first given the ministerial classification of IV-D, but on October 9, 1950, was reclassified I-A, a classification which was continued after personal appearance before his local board and which was affirmed by the appeal board on January 26, 1951 (R. 58-59).

Thereafter, on February 9, 1951, petitioner filed with the local board the special form for persons claiming to be conscientious objectors (R. 76-83).<sup>1</sup> In response to Question 5 as to the circumstances under which he believed in the use of force he said (R. 77):

Only in the interests of defending Kingdom Interests, our preaching work, our meetings, our fellow brethren and sisters and property against attack. I (as well as all Jehovah's Witnesses) defend those when they are attacked and are forced to protect such interests [sic] and scripturally so. Because in doing so we do not arm ourselves or carry carnal weap-

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<sup>1</sup> Petitioner testified at the trial that he did not claim to be a conscientious objector when he first filled out his questionnaire because he thought he could not claim both conscientious objector and ministerial status and he was more interested in the ministerial claim (R. 19).

ons in anticipation of or in preparation for trouble or to meet threats.

He also stated (R. 78):

And in being wholly dedicated to Jehovah God through Christ, I have become no part of this world which is governed by political systems. For this important Bible reason I am telling you that I conscientiously object to serving in any military establishment or any civilian arrangement that substitutes for military service \* \* \*.

Petitioner's case was reconsidered by the local board at the direction of the State Director (R. 83-84). He was then placed once more in class IV-D, but, after the State Director had advised that the petitioner did not meet the ministerial requirements (R. 85-86), he was again placed in I-A (R. 59). This classification was continued after various personal appearances by the registrant (R. 59-60, 86-96).

In connection with his appeal from this I-A classification, petitioner's claim to deferment as a conscientious objector was forwarded to the Department of Justice for investigation and report pursuant to Section 6(j) of the Universal Military Training and Service Act. The Department reported that the hearing officer "stated he was convinced that registrant has sincere objections to military service by reason of his religious training and beliefs and he recommended a I-O classifica-

tion." (R. 100-101.) The Department itself, however, did not so recommend, finding that "While the registrant may be sincere in the beliefs he has expressed, he has, however, failed to establish that he is opposed to war in any form. As indicated by the statements on his SSS Form 150, registrant will fight under some circumstances, namely, in defense of his ministry, Kingdom interests, and in defense of his fellow brethren. He is, therefore, not entitled to exemption within the meaning of the Act." (R. 101.)

Petitioner was thereafter classified I-A by the Appeal Board (R. 101-102). When ordered to report for induction, he reported but refused to submit to induction (R. 102-103, 104-105).

The trial court found petitioner guilty of willfully failing to report (R. 15-16). In affirming that judgment on appeal, the Court of Appeals for the Seventh Circuit held that it could not "say that the appeal board's denial of appellant's claim was without basis in fact" (Pet. 19). It recognized that other circuits had voided classifications refusing conscientious objector status to registrants who had expressed belief in the use of force in self-defense and in theocratic warfare<sup>2</sup> but thought that those cases rested on an incorrect theory of the scope of judicial review (Pet. 20). The court ruled that "Whether or not appellant's

<sup>2</sup> *United States v. Taffs*, 208 F. 2d 329 (C.A. 8), certiorari denied, 347 U.S. 928; *United States v. Hartman*, 209 F. 2d 366 (C.A. 2); *United States v. Pekarski*, 207 F. 2d 230 (C.A. 2); *Annett v. United States*, 205 F. 2d 689 (C.A. 10).

willingness to use force in defense of 'Kingdom Interests' is incompatible with a claim of conscientious objection to participation in war, his statement is an appropriate factor for the board to consider when ruling on his claim as bearing on the question whether he has brought himself within the statutory privilege." And the court further held that petitioner's statements that he objected to serving in any military establishment or civilian arrangement that substitutes for military service "were consistent only with objections to any command of governmental authority" and "do not *per se* establish that deep-seated conscientious belief which would entitle appellant to the claimed exemption" (Pet. 21).

#### DISCUSSION

1. As petitioner contends, and as the Court of Appeals recognized, the opinion below is in conflict with those of other circuits, cited at footnote 2, *supra*, p. 7, including *United States v. Taffs*, 208 F. 2d 329 (C. A. 8), in which the Government's petition for a writ of certiorari was denied, 347 U. S. 928.<sup>3</sup>

<sup>3</sup> The decision in the instant case is difficult to reconcile with a later decision by another panel of the same circuit in *Wilson v. United States*, No. 11086, decided July 15, 1954. In the *Wilson* case the registrant, a member of Jehovah's Witnesses, stated in his special form for conscientious objectors that he was not a pacifist and would fight for a theocratic government, but not for the unrighteous wars of this world. The local board and the state appeal board granted him a I-O (conscientious objector) classification. The Presidential Appeal Board, however, directed that he be classified I-A. While the Board did not state its reasons, this direction was in accord with its view, which we discuss below in the text at p. 12, that Jehovah's

We do not believe, as did the court below, that the differences in results stem from differing concepts of the scope of judicial review. All of the decisions recognize in principle the doctrine of *Estep v. United States*, 327 U. S. 114, 122, that the decisions of the selective service system are final even though they may be erroneous unless there is no basis in fact for the classification. The conflict has occurred because of a difference as to the sufficiency of a complex of facts common to Jehovah's Witnesses draft cases. The other circuits have held that refusal of conscientious objector classification to sincere members of Jehovah's Witnesses

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Witnesses who merely adopt as their own the published views of the group (that they will fight only in such wars as their religious organization considers approved by God) are not entitled to a conscientious objector classification. On this basis, the district court denied a motion for judgment of acquittal. The Court of Appeals, however, reversed, holding that there was in the record no basis for denial of the conscientious objector classification. The result in *Wilson* can possibly be reconciled with the reasoning of the decision in the instant case on the view that (a) willingness to fight in theocratic war is a factor which a board may properly consider but need not necessarily find inconsistent with a claim to conscientious objector status, but that (b) a court should not conjecture as to the basis on which the National Board acted when it rendered no opinion in reversing the local and state boards. However, the decision in *Wilson* seems in terms to go further and accept such cases as *Taffs* as reflecting a view of the law with which the court agrees, contrary to the position of the court in the instant case.

A petition for rehearing has been filed in the *Wilson* case, but is as yet undecided. A petition for rehearing is also pending in the similar case of *Close v. United States*, decided June 10, 1954, by the Seventh Circuit. The differing views within the Seventh Circuit emphasize the need for authoritative clarification of the law in this field.

is without basis where the denial of the claim is supported on the record only by the fact that the registrant, in adherence to the tenets of his sect, has indicated a willingness to fight in defense of himself, his family and his sect, or, as it has sometimes been expressed, in theocratic wars. The court below, on the other hand, has held that willingness to engage in combat in defense of person, family and sect is a factor which may properly be considered in determining the validity of a claim to conscientious objection, and that, without more such willingness plus expressed opposition to all forms of governmental authority furnishes sufficient basis for the I-A classification and denial of the claim of conscientious objection.<sup>4</sup>

The various registrants use differing terminology to express their convictions, with the result that the court decisions are also somewhat variously phrased. The essence of the question in all these cases, however, is whether sincere adherence to the tenets of Jehovah's Witnesses, as expressed in the pronouncements of the sect, with no indication that the individual registrant has personal views going beyond the official pronouncements, is sufficient to establish that the registrant is opposed to "war in any form" and entitled to classification as a conscientious objector. That was the question

<sup>4</sup> The latter ground mentioned by the court below—opposition to all forms of governmental authority—is not expressly dealt with in the decisions from the other circuits, but has almost always been present factually. It was a factor to which the Government called attention in its petition in the *Taffy* case, No. 576, O.T., 1953, pp. 15-16.

which the Government presented in the *Taffs* petition at a time when there was no conflict of decisions among the circuits.<sup>5</sup> A conflict is now presented by the instant decision, and, for that reason, the Government does not oppose the granting of the petition and consideration of the issue by the Court at this time.

2. The question is one of continuing importance. As indicated in the *Taffs* petition, the Department of Justice in its instructions to hearing officers for conscientious objector cases, a copy of which was annexed to that petition as Appendix B, had taken the position that, while individual members of Jehovah's Witnesses might be conscientious objectors on the basis of personal views, adherence to the general doctrines published in the Watchtower, the Witnesses' organ, did not itself show "opposition to war in any form" as required by the statute to sustain a conscientious objector classification. After the denial of certiorari in the *Taffs* case, and in the light of that denial, the Department withdrew its former instructions on the subject, in effect accepting the decision of the Eighth Circuit in *Taffs* as the controlling interpretation of the draft law for Jehovah's Witnesses.

---

<sup>5</sup> The question was phrased in the *Taffs* petition (No. 576, O.T. 1953, p. 2) as follows:

"Whether the objections of a registrant under the Universal Military Training and Service Act to participation, not in all wars, but in any war which is not approved by God, which objections are expressly based upon the doctrines expounded by Jehovah's Witnesses, require his classification as a conscientious objector."

However, the National Appeal Board, established to exercise the authority given to the President under Section 10 of the Universal Military Training and Service Act, 50 U. S. C. App. 460, does not regard the *Taff's* decision as binding; in such cases as come before it for decision it still rules that those members of Jehovah's Witnesses who merely adopt as their own the published views of the group that they will fight only in such wars as their religious organization considers approved by God, are not persons who establish "opposition to war in any form" within the statutory definition. It is therefore important, both to the registrants and the Selective Service System, that the question be authoritatively determined by this Court.

3. One additional point merits clarification. In the petition for certiorari in the *Taff's* case, the Government stated that it did not seek review of the holding of the court in that case "that the expressed willingness of the registrant and other Jehovah's Witnesses to use force, even to the extent of killing, in self-defense or in defense of home, family, or associates, does not of itself exclude them from the classification of conscientious objectors." (No. 576, O.T. 1953, p. 11.) This view was embodied in the instructions to hearing officers referred to in the *Taff's* petition and the Government still adheres to it. The Government does not, however, view this case as presenting only that factor. The recommendation of the Department of Justice against grant of the conscientious objector classification was based on the registrant's willingness to fight "in defense of his ministry,

Kingdom interests, and in defense of his fellow brethren." Willingness to use force in defense of self or family is not mentioned. We interpret petitioner's statements to the draft board as meaning more than a willingness to fight in self-defense and as presenting, although less voluminously and less articulately, the same general position as that presented in *Taffs*, i.e., the position of a sincere member of Jehovah's Witnesses whose personal views with respect to war coincide with but do not go beyond the published views of the group which retains the right to fight in a theocratic war or in defense of "Kingdom interests." This interpretation is supported by petitioner's own statement explaining the extent to which he was willing to use force. He said "I (as well as all Jehovah's Witnesses)," thus indicating that he thought of his position as coinciding with that of the group as a whole.

#### **CONCLUSION**

For the reasons stated, the government does not oppose the granting of the petition for a writ of certiorari with respect to the question discussed in this memorandum.

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AUGUST, 1954.

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In the Supreme Court of the United States

OCTOBER TERM, 1954

ANTHONY TONY SICUKELLA, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES

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# In the Supreme Court of the United States

OCTOBER TERM, 1954

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No. 250

ANTHONY TONY SICURELLA, PETITIONER

v.

UNITED STATES OF AMERICA

---

*ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE SEVENTH CIRCUIT*

---

BRIEF FOR THE UNITED STATES

---

#### OPINION BELOW

The opinion of the Court of Appeals (R. 110-115) is reported at 213 F. 2d 911.

#### JURISDICTION

The judgment of the Court of Appeals was entered on June 15, 1954 (R. 115). On June 28, 1954, the time for filing a petition for a writ of certiorari was extended to August 14, 1954, by order of Mr. Justice Minton (R. 116). The petition was filed on

July 30, 1954, and granted on October 14, 1954 (R. 116). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

**QUESTION PRESENTED**

Whether there was basis in fact for the refusal of the selective service board to classify petitioner as a conscientious objector in view of the record which supports the conclusion that petitioner, as a Jehovah's Witness, was not opposed to participation in all war, but objected to service because of the fact that it would interfere with his religious activities.

**STATUTE INVOLVED**

Universal Military Training and Service Act, 62 Stat. 604, 612, 619, 622; 64 Stat. 1074; 65 Stat. 75, 86:

Section 6(j) [50 U.S.C. App. 456(j)]:

Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. Any person claiming exemption from combatant training and service because of such conscientious objections whose claim

is sustained by the local board shall, if he is inducted into the armed forces under this title, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate \* \* \*. Any person claiming exemption from combatant training and service because of such conscientious objections shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board. Upon the filing of such appeal, the appeal board shall refer any such claim to the Department of Justice for inquiry and hearing. The Department of Justice, after appropriate inquiry, shall hold a hearing with respect to the character and good faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The Department of Justice shall, after such hearing, if the objections are found to be sustained, recommend to the appeal board that (1) if the objector is inducted into the armed forces under this title, he shall be assigned to non-combatant service as defined by the President, or (2) if the objector is found to be conscien-

tiously opposed to participation in such non-combatant service, he shall in lieu of such induction be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate \* \* \*. If after such hearing the Department of Justice finds that his objections are not sustained, it shall recommend to the appeal board that such objections be not sustained. The appeal board shall, in making its decision, give consideration to, but shall not be bound to follow, the recommendation of the Department of Justice together with the record on appeal from the local board. \* \* \*

Section 10(b)(3) [50 U.S.C. App. 460(b)(3)]:

\* \* \* [L]ocal boards \* \* \* shall, under rules and regulations prescribed by the President, have the power within the respective jurisdictions of such local boards to hear and determine, subject to the right of appeal to the appeal boards herein authorized, all questions or claims with respect to inclusion for, or exemption or deferment from, training and service under this title, of all individuals within the jurisdiction of such local boards. The decisions of such local board shall be final, except where an appeal is authorized and is taken \* \* \*. The decision of \* \* \* appeal boards

shall be final in cases before them on appeal unless modified or changed by the President.

\* \* \*

Section 12(a) [50 U.S.C. App. 462(a)]:

Any \* \* \* person \* \* \* who \* \* \* refuses \* \* \* service in the armed forces \* \* \* or who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title, or rules, regulations, or directions made pursuant to this title \* \* \* shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than \$10,000, or by both such fine and imprisonment \* \* \*.

#### STATEMENT

Petitioner was charged, in a one-count indictment, with refusal to be inducted, in violation of the Universal Military Training and Service Act (R. 5). Petitioner waived a jury (R. 3) and, upon trial, was found guilty by the court and sentenced to two years' imprisonment (R. 15-16). Petitioner conceded the fact of his refusal to be inducted, but contended that there existed no basis in fact for denial of his claim for classification as a minister<sup>1</sup> and of his claim for classification as a conscientious objector (R. 12). The Court of Appeals

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<sup>1</sup> This contention was not pursued in the Court of Appeals or in this Court (R. 111).

for the Seventh Circuit affirmed the conviction (R. 115).

Petitioner's record with the Selective Service System may be summarized as follows:

Petitioner was born on June 13, 1927. He registered on September 11, 1948, stating his occupation as that of a "full time" student. (R. 51-53).<sup>2</sup>

In his classification questionnaire, filed on January 5, 1949 (R. 55), petitioner left blank the space in which he was required to affix his signature if he was a conscientious objector (R. 57). In other portions of the questionnaire, petitioner asserted that he had been a minister of the Jehovah's Witnesses sect for 15 years, regularly serving as such at the time of the questionnaire, and that he had been "formally ordained" in January 1944 (R. 55-56).<sup>3</sup> Petitioner also asserted that he was a student preparing for the ministry at a Kingdom Hall of the sect (R. 56). He stated his occupation as that of file clerk with the Railway Express Agency, and that he had commenced that occupation on June 5, 1948. He was paid \$229.07 per month, and worked an average work week of 44 hours. He stated that he was a regular or permanent employee and ex-

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<sup>2</sup> As appears below, in a form filed later petitioner inconsistently stated that he had been employed in a clerical capacity as of the time at which he here stated that he was a full time student.

<sup>3</sup> The date is set in 1942 by a letter of petitioner's company servant, dated November 7, 1950 (R. 65), in 1940 by petitioner's later conscientious objector's questionnaire (R. 78) filed in February 1951 (R. 76), and in February 1943 by petitioner's testimony before the local board on July 14, 1952 (R. 96).

pected to continue in his work indefinitely. (R. 56-57.)

Petitioner also asserted that his physical condition disqualifies him from service, citing "nervousness, chronic appendicitis [sic] and defective hearing" (R. 57-58).<sup>4</sup> At another point in the questionnaire he did not claim IV-F, but stated that his classification should be IV-D, the ministerial classification (R. 58).

He was classified IV-D on March 1, 1949 (R. 58). On September 20, 1956, he was notified to appear before the board on September 26, and thereafter, on October 9, 1950, was classified I-A (R. 58).<sup>5</sup> On October 16, 1950, petitioner requested a hearing, which was granted on November 8, 1950 (R. 58-59, 62-63). With the request for hearing, and at the hearing he presented statements of a number of individuals variously referring to him as "an ordained minister" and as a student minister. None of the statements attested to any objection to war. (R. 60-62, 64-65.) Petitioner also presented a list of biblical citations, as follows (R. 63):

Luke 16:13 Cannot serve God and man

John 18:36 My Kingdom is not of this world

Acts 5:29 One should obey God rather than man

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<sup>4</sup> He was found acceptable for induction on November 27, 1950 (R. 68).

<sup>5</sup> The record does not disclose the details of the appearance before the board, or whether petitioner complied with the notice by appearing.

Exo. 23:32 Make no covenant with their gods  
Mat. 7:1-2 Who are you to judge  
Mark 16:15 Preach in all the world  
Mat. 24:14 This gospel shall be preached  
Luke 6:31 Do unto others

Petitioner was classified I-A on November 8, 1950 (R. 59). On his appeal (R. 66), the appeal board, on January 17, 1951, classified petitioner I-A (R. 59). In letters protesting denial of his ministerial classification, petitioner asserted he was already in God's army (R. 69-70) and could not assume the obligations of any army of this world (R. 73-74).

On February 5, 1951, petitioner for the first time requested a form for claim of classification as a conscientious objector as distinguished from a minister (R. 59). In this form, petitioner stated, *inter alia* (R. 77, 81-82) :

\* \* \* I am already in the Army of Christ Jesus serving as a soldier of Jehovah's appointed Commander Jesus Christ. (2 Tim. 2:3 & 4). Inasmuch as the war weapons of the soldier of Jesus Christ are not carnal, I am not authorized by his Commander to engage in carnal warfare of this world. (2 Corinthians 10:3 & 4, Ephesians 6:11-18) Furthermore being enlisted in the army of Jesus Christ, I cannot desert the forces of Jehovah to assume the obligations of a soldier in any army of this world without being guilty of desertion and suffering the punishment meted out to deserters by Almighty God. Also I follow the

*admonition* given to us at Matthew 22:21 which states: "Render unto Ceaser the things that are *Ceaser's* and God's things unto God."<sup>6</sup>

In response to the question as to the circumstances, if any, in which petitioner believed in the use of force, he wrote (R. 77, 82):

Only in the interests of defending Kingdom Interests, our preaching work, our meetings, our fellow brethren and sisters and our property against attack. I (as well as all Jehovah's Witnesses) defend those when they are attacked and are forced to protect such *interests* and scripturally so. Because in doing so we do not arm ourselves or carry carnal weapons in anticipation of or in preparation for trouble or to meet threats. In doing so I try to ward off blows and attacks only in defense. I do not use weapons of warfare in defense of myself or the Kingdom interests. I do not retreat when attacked in my home or at meeting places, but will retreat on public or other

<sup>6</sup> Substantially similar language is employed by petitioner in describing the creed or official statement of his sect with respect to participation in war (R. 80). At the trial, petitioner testified that he refused to submit to induction "[b]ecause I thought I was not properly classified and that would not give me the opportunity to carry out my vow to teach \* \* \* [o]r follow the admonition of Jesus as stated in John 18:36:

"My Kingdom is not of this world. If my Kingdom were part of this world then would my servants fight."

\* \* \* \* \*

"Not only today am I already in the Army of Christ serving as a soldier of His, but if I should desert His forces and join another force, it would mean I would be a deserter and then I would be meted out punishment, death." (R. 27.)

property and shake the dust off my feet; so not giving what is holy to dogs and not throwing my pearls before swines. (Matthew 10:14 & 7:6) So I retreat when I can do so and avoid a fight or trouble.

In response to the question asking for a specification of any public expression of his conscientious objection, petitioner referred only to his "water immersion" in January 1940 (R. 78, 82).<sup>7</sup>

Petitioner appended to the form a statement repeating the same statement he made in the form, as follows (R. 82-83):

\* \* \* [I]n being wholly dedicated to Jehovah God through Christ, I have become no part of this world which is governed by political system. Just as Jesus said at John 18:36: "My Kingdom is not of this world." For this important Bible reason I am letting you know that I conscientiously object to serving in any military *esblishment* or any civilian arrangement that substitutes for military service.

He also stated that the facts adduced in the form entitled him to classification as a minister (R. 83). After various proceedings, during which petitioner was again given deferment as a minister (R. 59),

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<sup>7</sup> This date conflicts with the date January 1944 specified in petitioner's classification questionnaire in January 1949 (R. 56) and the date of 1942 in the affidavit of petitioner's company servant in November 1950 (R. 65). With respect to membership generally, as distinguished from baptism, petitioner stated that he had been brought up in the sect, both of his parents being members (R. 80).

he was once again classified I-A on March 17, 1952 (R. 59). On appeal reasserting the ministerial exemption, the appeal board on May 21, 1952, classified petitioner I-A (R. 90). Petitioner thereupon wrote, *inter alia* (R. 90-91) :

If you do not recognize me to be a minister and in class IV-D, I wish you would give full consideration to my conscientious objector form in which I clearly state that my conscientious objections are based on my ministerial status and religious beliefs \* \* \*.

On July 2, 1952, the state director requested a further personal hearing for petitioner, due to lack of a local board certificate that the written record presented a full summary of all evidence (R. 94-95). After the personal appearance, the board's summary reported only statements relating to the ministerial claim. Petitioner's appeal, after he was again classified I-A by the local board (R. 60), also referred only to the ministerial status and made no charge of bias on the part of the local board (R. 97).<sup>8</sup>

The appeal board determined, on October 22, 1952, that petitioner should not be classified as a

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<sup>8</sup> No contention is raised or argued in the petition for certiorari or the brief on the merits concerning any prejudice on the part of the board, but in the statement of facts in both the petition and the brief, petitioner refers to testimony at the trial in which he alleged that the hearing was "very summary" and "brief", that the board members were prejudiced (this offer of proof was rejected by the court), and that one board member considered himself unable to classify petitioner as a minister because it was "over their head" (Br. 13).

conscientious objector (R. 60). The case was accordingly referred to the Department of Justice and petitioner appeared before a hearing officer. On January 23, 1953, the Department of Justice, in its letter to the appeal board, reviewed petitioner's record and reported the hearing officer's conclusion that petitioner was a sincere conscientious objector (R. 99-101). The Department referred, however, to petitioner's statements that he was "already in the Army of Christ Jesus serving as a soldier," that he relied on the Watchtower society for his religious guidance, and that he believed in the use of force in defending, *inter alia*, "Kingdom Interests", and "our preaching work" (R. 100). The Department concluded (R. 101):

While the registrant may be sincere in the beliefs he has expressed, he has, however, failed to establish that he is opposed to war in any form. As indicated by the statements on his SSS Form No. 150, registrant will fight under some circumstances, namely in defense of his ministry, Kingdom Interests, and in defense of his fellow brethren. He is, therefore, not entitled to exemption within the meaning of the Act.

On February 10, 1953, the appeal board classified petitioner I-A (R. 102). On February 19, he was ordered to report for induction (R. 102-103).<sup>9</sup> On

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<sup>9</sup> On February 26, 1953, petitioner complained to the local board that there were missing from his file "The Legal Booklet, which stresses and points out my reason for [IV-D classi-

March 5, 1953, petitioner refused to be inducted (R. 104-105).

#### SUMMARY OF ARGUMENT

The government disagrees sharply with petitioner's concept of the issues as represented in his brief, *i.e.*, his assumption that the classification of conscientious objector was denied, first, because of petitioner's belief in personal self-defense, or, second, because it was assumed that he would refuse to perform the civilian work required of conscientious objectors even if so classified. The first misconception stems from petitioner's undue emphasis on a portion of the recommendation of the Department of Justice (R. 101) as having condemned petitioner's "legal and Biblical right of self-defense." (Pet. Br. 15, 18-20, 21-22.) The Department was not concerned with petitioner's protestations as to personal self-defense standing alone but with the willingness of petitioner—specifically referred to in addition to defense of property and meetings (R. 77)—to use force in defense of "Kingdom Interests," his ministry, and his fellow brethren.

Similarly, the government at no point supported the denial of a classification merely because a registrant might later refuse to perform work in the national interest. The only possible source for such misapprehension appears to be petitioner's mis-

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fication]," also "the out-come of or from the hearing" before the Department of Justice hearing officer, and the F.B.I. report "which I have the right to see" (R. 103). He also complained that the board had failed to recognize his claim of classification as a conscientious objector (R. 104).

reading of the opinion below which relied upon his own utterances of complete objection to any and all governmental interference with his time as constituting evidence of something other than—and far removed from—an objection to war itself.

The issue which the government discusses in this brief is whether petitioner's manifest motive to avoid all governmental interference with his religious activities, coupled with his support of the Jehovah's Witnesses' disavowal of pacifism, constitutes some evidence in support of the Board's denial of his claim of conscientious objection, on the theory that the claim is not based on the kind of abhorrence to all war to which the statute relates. The statutory provision is a specific exemption, deriving its earliest analogies from colonial exemptions from the actual bearing of arms, and never extended beyond the clear and simple concept of a religious objection directed precisely and unqualifiedly against participation in war as such. The language makes no exception for the registrant who opposes a particular war, but admits that he or his sect may find some future flesh-and-blood war, like certain past wars, to have the approval of Jehovah. The exemption, moreover, has not been extended to the entirely different objection against any interference with the time which a registrant feels he should devote to religious activity even though he might, in roundabout fashion, find war objectionable, not as war, but as an inroad on his time. That type of exemption is available only to ministers.

Analysis of petitioner's statements shows that his

objection is not the unqualified and unchanging religious objection to war accorded special treatment by the statute, but only a conditional objection, reserving always the chance of participation in a war which, upon the finding of petitioner or of the Watchtower Society, is believed to be approved by Jehovah. This reservation, in effect, of the right of petitioner or his sect, rather than of Congress, to call for petitioner's participation in war, and the consequent absence of a complete religious objection to war as such, is not negated by petitioner's obscure general statements espousing non-carnal weapons—general statements principally intended to describe only petitioner's current preaching efforts. Nor can petitioner's statements of belief in force on behalf of "Kingdom Interests" be deemed mere espousals of individual self-defense. They are expressions appropriate only to the large-scale employment of force which is war.

The analysis of petitioner's statements further reveals that the essence of petitioner's objection is not even related to war but is, rather, that the government should not take petitioner away from his religious activities—from his own chosen service as a "soldier" in Jehovah's army. As stated above, this type of general objection to the interruption of religious activities caused by war is beyond the scope of the exemption granted by Congress.

#### **ARGUMENT**

The government sharply disagrees with petitioner's concept of the issues as represented in the primary thrust of his brief, *i.e.*, his assumption that

the classification of conscientious objector was denied, first, because of petitioner's belief in personal self-defense, or, second, because it was assumed that even if registrant were classified as a conscientious objector he would refuse to perform civilian duties assigned to him. The first misconception stems from petitioner's undue narrowing of the recommendation of the Department of Justice to represent the Department as having condemned petitioner's "legal and Biblical right of *self-defense.*" (Pet. Br. 15.) The Department did not express itself as concerned with petitioner's protestations as to personal self-defense standing alone but with the willingness of petitioner—specifically referred to in addition to defense of property and meetings (R. 77)—to use force in defense of "Kingdom Interests," his ministry, and his fellow brethren. And neither the selective service board, nor the court, nor the Department of Justice supported or supports the denial of the classification of a conscientious objector on the ground that a registrant would later refuse to perform work in the national interest. The only possible source for such an astounding misapprehension seems to be the holding of the court below that petitioner's own utterances, of complete objection to any and all governmental interference with his time, constitute evidence of something other than—and far removed from—an objection to war itself.

The government takes the position that petitioner's willingness to fight in defense of "Kingdom Interests", particularly when those words are con-

sidered in the light of the teachings of his sect, shows, not an unqualified opposition to all war, but a conditional objection to such wars as are not considered by himself or his sect to be sanctioned by Jehovah. And the government also takes the position that the core of petitioner's objection is not opposition to war, but unwillingness to accept any intrusion upon the time which he desires to devote to his religious obligations, an objection which the government does not regard as within the exemption granted by Congress. These two factors, in the view of the government, are sufficient basis in fact for denial of petitioner's claim to classification as a conscientious objector. Those are the issues which are really in this case and those are the issues we discuss below.

**The Exemption for Conscientious Objectors Does Not Apply to a Jehovah's Witness Whose Objection to War Is Not Total But Is Subject to Reservations in the Case of "Kingdom Interests", nor to an Objection Primarily Directed Against Interference With a Registrant's Devoting Part of His Time to Religious Activity.**

A. *The statutory exemption for conscientious objectors is limited to those who, on religious grounds, are specifically and unconditionally opposed to any form of warfare.*

The significant language, for present purposes, of Section 6(j) of the Universal Military Training and Service Act is its first sentence reading as follows:

Nothing contained in this title shall be construed to require any person to be subject to

combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form.<sup>10</sup>

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<sup>10</sup> So far as is pertinent to the issues in this case we have discovered no indication in the congressional reports of any special meaning to this provision other than the words naturally carry. As to the 1940 Act, S. 4164 and H.R. 10132, 76th Cong., 3d Sess., provided (sec. 7(d)) for noncombatant service by "a member of any well recognized religious sect whose creed or principles forbid its members to participate in war in any form, if the conscientious holding of such belief by such person shall be established." At the hearings before the Senate Committee on Military Affairs in July, 1940 (76th Cong., 3d Sess.), there were few references to the provision. As examples, the editor of the Catholic Worker protested, without challenge by the committee, that the provision would protect only Quakers, Mennonites and Dunkards, but not Catholics (p. 156). Representatives of the Society of Friends and other groups urged, *inter alia*, the handling of conscientious objectors by civilian authority and the complete exemption of those opposed to all service (p. 164; and see pp. 189-191, 196-198 [Seventh Day Adventists], 308-325). The reports on S. 4164 and H.R. 10132 (August 5 and 29, 1940, 76th Cong., 3d Sess., S. Rep. 2002, p. 3, H. Rep. 2903, p. 5) only summarized the then Sections 5(d) and (e), respectively, using the phrase "opposed to participation in war in any form." The conference reports (Sept. 12, 1940 and Sept. 14, 1940, 76th Cong., 3d Sess., H. Rep. 2937, pp. 17-18, H. Rep. 2947, pp. 17-18) added no discussion of the basic criteria of conscientious objection. The discussion was concerned with reducing Department of Justice hearings to occasions where an appeal board had acted.

A summary of the 1948 Act (80th Cong., 2d Sess., Senate Committee Print, (p. 5) states, "The act contains detailed wording as to the criteria which apply in determining whether or not an individual is in fact conscientiously opposed to military service by reason of religious training and belief." The report of the House committee (May 7, 1948, 80th Cong., 2d Sess., H. Rep. 1881, p. 10) refers only briefly to deferment of conscientious objectors, the provision under H.R. 6401 (p. 18, sec. (k)) having been for either noncombatant service or

The language of this Court with respect to the burden of proving a ministerial exemption in *Dickinson v. United States*, 346 U.S. 389, 395, is equally applicable here; since the provision "is a matter of legislative grace, the selective service registrant bears the burden of clearly establishing a right to the exemption." Petitioner does not establish that

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deferment. The report accompanying S. 2655 (May 12 [legislative day May 10], 1948, 80th Cong., 2d Sess., Senate Rep. No. 1268, p. 14) states that the provision as to conscientious objectors "reenacts substantially the same provisions as were found in subsection 5(g) of the 1940 act \* \* \* (See *United States v. Berman*, 156 F. 2d 377 [C.A. 9], certiorari denied, 329 U.S. 795). \* \* \* The exemption is viewed as a privilege. Therefore, where a registrant who has been assigned to work of national importance purposefully fails to comply with the duties imposed upon him, provision is made for withdrawing the privilege \* \* \*." The conference report (June 19, 1948, 80th Cong., 2d Sess., House Rep. No. 2438, p. 48) refers only to the Senate provision that objectors opposed to noncombatant service be assigned to work of national importance, which provision was dropped, this Act providing for deferment in such cases.

In 1951, the report of the Senate committee (February 21, 1951 [legislative day, January 29, 1951] 82d Cong., 1st Sess., S. Rep. No. 117, p. 69), said of the then proposed provision of S. 1 concerning conscientious objectors that it "returns to the language used in the 1940 act," providing for work of national importance by objectors to noncombatant service. The House report (82d Cong., 1st Sess., H. Rep. No. 271, pp. 33-34) adds no discussion of the basic criteria of conscientious objection, since the House amendments with respect to deferments (*ibid.*, pp. 5-7) did not include any proposed revision of the language concerning conscientious objectors. The conference report of May 31, 1951 (82d Cong., 1st Sess., H. Rep. No. 535, pp. 19-20) contains no discussion of the criteria of conscientious objection, but outlines only the new requirement that objectors to noncombatant service perform work of national importance. The House managers had objected until language was agreed upon which would not provide for national work camps.

he is within the statutory provision by showing a situation he deems as meritorious as that for which Congress has felt it proper to provide an exemption. As was said in *Berman v. United States*, 156 F. 2d 377, 382 (C. A. 9), certiorari denied, 329 U. S. 795, with reference to an attempt to extend the conscientious objector provision to non-deistic objection to war:<sup>11</sup>

[The phrase] \* \* \* cannot be deprived of its effectiveness by specious reasoning that something which to its user is more acceptable than some other thing is therefore the same thing.

The special provision here involved represents only a very limited expansion of the basic colonial concept of an exemption from "bearing arms"<sup>11a</sup> or "to trayne, arm or fight, to kill."<sup>12</sup> This concept

<sup>11</sup> This is the only court decision cited on conscientious objection in the official congressional reports (May 12, 1948, S. Rep. 1268, 80th Cong., 2d Sess., p. 14).

<sup>11a</sup> Selective Service System, *Conscientious Objection* (1950, Special Monograph No. 11) Vol. I, p. 30 (Pennsylvania, 1757).

<sup>12</sup> *Backgrounds of Selective Service* (1947, Special Monograph No. 1) Vol. II, Part 12, pp. 13-17 (Rhode Island, 1673). And see Special Monograph No. 11, *supra*, Vol. I, p. 33 (Pennsylvania, June 30, 1775, "conscientiously scrupulous of bearing of arms"); pp. 33-34 (Continental Congress, 1775, "people who from Religious Principles cannot bear Arms *in any case*" [italics supplied]); p. 36 (Pennsylvania, "conscientiously scrupulous of bearing Arms"); p. 37 (Virginia, 1766, "all the people called Quakers", 1776, "all Quakers and Mennonists"); pp. 39-40 (Pennsylvania, 1838, "conscientiously scruple to bear arms"; Ala., 1819, Texas, 1859, Ill. 1818 and 1870, Iowa, 1846, Ky., 1850, Ind. 1851 substantially the same).

of an opposition to the bearing of arms—actual combatant service—obviously is derived from a literal reading of the Sixth Commandment, “Thou shalt not kill.”

With the Selective Service Act of May 18, 1917 (40 Stat. 76, 78) there appeared the forerunner of the present language, exempting only from combatant service members of any sect which forbids its followers “to participate in war in any form,” the members being required to entertain “religious convictions \* \* \* against war or participation therein.”<sup>13</sup> The 1917 Act gave exemption only from

Madison's draft of a bill of rights (June 8, 1789) contained a clause (rejected) “no person religiously scrupulous of bearing arms shall be compelled to render military service in person”. Sibley & Jacob, *Conscription of Conscience* (1952, Cornell University Press) p. v. In August 17, 1789, the draft of the bill of rights amendments included, with the provision for freedom of speech and press, “the equal rights of conscience.” This was not enacted. Special Monograph No. 11, *supra*, Vol. I, p. 38. The Federal Draft Act of February 24, 1864, 13 Stat. 6, 9, employed the phrases, “conscientiously opposed to the bearing of arms” \* \* \* “conscientious scruples against bearing arms \* \* \* supported by satisfactory evidence that his deportment has been uniformly consistent with such declaration”. And see Special Monograph No. 11, *supra*, p. 44 (N. Car., 1861, “scruples of conscience against bearing arms”); p. 44 (Virginia, 1862, “bona fide prevented from bearing arms, by the tenets of the church to which [he] belongs”); cf. pp. 45, 48 (Confederate Congress, Oct. 11, 1862, which exempted members of the Friends, Dunkards, Nazarenes, Mennonists, upon payment of fee; all such exemptions were apparently revoked by the act of March 18, 1865).

<sup>13</sup> The text is (40 Stat. 76, 78):

“See. 4. \* \* \* nothing in this Act contained shall be construed to require or compel any person to serve in any of the forces herein provided for who is found to be a member of any well-recognized religious sect or organization at present

combatant service; even those who were accepted as conscientious objectors were required to perform noncombatant service as a part of the military forces. Obviously, under that Act the only type of objection given statutory protection was the objection to combat as such.<sup>14</sup>

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organized and existing and whose existing creed or principles forbid its members to participate in war in any form and whose religious convictions are against war or participation therein in accordance with the creed or principles of said religious organizations, but no person so exempted shall be exempted from service in any capacity that the President shall declare to be noncombatant; \* \* \*."

It appears that members of Jehovah's witnesses would not be entitled to exemption if this provision of the 1917 act had remained in effect. In its official publication, the *Watchtower*, for February 1, 1951, (Appendix, *infra*, pp. 44, 52) it is stated (*ibid.*, p. 52). "They are not against war between the nations, and they do not interfere with the war efforts of the nations nor with anyone who can conscientiously join in such efforts. They fight only when God commands them to do so, because then it is theocratic warfare." And the president of the Watchtower Society, H. N. Knorr, is reported by Sibley and Jacob in *Conscription of Conscience* (Cornell Studies in Civil Liberty, 1952), p. 35 as denying "that there was any instruction or command from the central organization to take any particular course of action with respect to conscription and war."

<sup>14</sup> Similarly narrow was the exemption provided with respect to the militia, only shortly before the above 1917 enactment. See the National Defense Act of June 3, 1916 (39 Stat. 166, 197) which provided, and still provides today (see 32 U.S.C. 3), for exemption from combatant duty only on the part of those who because of "religious belief" claim exemption from "military service."

The language of these 1916 and 1917 enactments was not discussed in the congressional reports (64th Cong., 1st Sess.: March 6, 1916, H. Rep. 297; March 16, 1916, S. Rep. 263; May 16, 1916, Conf. Rep., S. Doc. 442. 65th Cong., 1st Sess.: April 19, 1917, S. Rep. 22; April 21, 1917, H. Rep. 17; May 15, 1917, H. Rep. 52; May 16, 1917, H. Rep. 53).

The present law grants an additional exemption from service in a noncombatant capacity within the framework of the military establishment, but only if the registrant establishes, in addition to his objection to participation in war in any form, a further opposition to noncombatant military service. But, if such further exemption is granted, the law requires the registrant to perform civilian work contributing to the national interest. Thus, no total exemption from support of the government even during time of war is permitted, though Congress obviously recognized that the war effort is supported by, and dependent upon, the general economy. Thus under the present law, as in the past, the conscientious objection which is protected is that which is directed against participation in military operations as such.

It is obvious that an exemption conditioned upon the specific objection to participation in war cannot be granted when all that is established is a general unwillingness by a registrant to leave his religious pursuits. It is given to those who have religious scruples against war, not to those who have a religious call for preaching. The latter can qualify for exemption only if they fulfill the requirements for the ministerial classification.

Nor is the exemption granted to those whose objection to war is conditional and is directed merely against war as declared by the congressional representatives of the people of the United States, as distinguished from war—equally sanguinary—deemed by the registrant or the leaders of his sect.

to be at the behest of Jehovah.<sup>15</sup> The objection must be to participation in war, not in a particular war.

**B. Petitioner's statements disclosed such limitations on his opposition to participation in war as to fall short of the exemption**

In evaluating petitioner's actual statements, the government unequivocally states that it would not urge denial of petitioner's status as a conscientious objector if his utterances disclosed nothing more than a willingness to participate in some hypothetical spiritual conflict of Jehovah and his angels against Satan. Moreover, while the Court of Appeals below attached significance to petitioner's willingness to use force in self-defense, it is not necessary to consider whether in this case the registrant's position on self defense would, by itself, be so inconsistent with his claim of conscientious objection as to serve as a basis in fact for a denial of his claim. In the portion of the special form for conscientious objectors in which petitioner was required to answer as to his belief in the use of force, "if any", he asserted approval of the use of force not only in the common, limited instances of individual self-defense but also "in the interests of de-

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<sup>15</sup> It is not necessary to refer back to Biblical times to find wars which many religious people sincerely believed to be inspired or at least supported by God. Certainly the Crusades enlisted the aid of many who sincerely believed that they were serving a divine cause. The forces of Islam were equally inspired. In World War I many on both sides found religious support for their participation in the conflict.

fending Kingdom Interests" and "fellow brethren", and stated, "I (as well as all Jehovah's Witnesses) defend those when they are attacked and are forced to protect such interests and scripturally so" (*supra*, p. 9).<sup>16</sup> It was this language which was the basis of the recommendation by the Department of Justice to the appeal board (*supra*, p. 12) and which the appeal board could properly rely upon as a basis for considering petitioner far short of being a conscientious objector.<sup>17</sup> The board could properly conclude that the defense of the "Kingdom Interests" and fellow brethren by Jehovah's Witnesses, under this reservation of the authority to use force, would involve more than individual

<sup>16</sup> The language used by petitioner here, as in other portions of his written and oral statements of position, is subject to a variety of interpretations. However, when the record is read in conjunction with the records in the other Jehovah's Witnesses cases, *Witmer v. United States*, No. 164, O. T. 1954, for example, it becomes apparent that generally the individuals involved are attempting to repeat the published tenets of the sect as they remember them. The basic question in the case, whatever the terminology used by the registrant, is whether sincere adherence to the tenets of Jehovah's Witnesses, with no indication that the individual has personal views which go beyond the official pronouncements of his sect, constitutes opposition to war within the meaning of the 'atute.

<sup>17</sup> It is not correct to say, as is stated in the petition and petitioner's brief, that the Department of Justice relied upon petitioner's willingness to employ the "legal and Biblical right of self-defense" (Pet. 11; Pet. Br. 15, 44). The Department's reference was, instead, to the willingness to use force for the much broader scope of "defense of his ministry, Kingdom Interests, and in defense of his fellow brethren" (R. 101). This language is a far cry from that of the case cited by petitioner (Pet. 12; Br. 27) in which the court refers to "willingness to act in self-defense and then only without weapons" (*United States v. Pekarski*, 207 F. 2d 930, 931 (C.A. 2).

self-defense, and contemplated such mass use of force as could be nothing less than warfare.<sup>18</sup>

Of particular significance in petitioner's statement of the basis for his objections is a list of over a half-dozen biblical quotations which petitioner presented at the time of his personal appearance before the board (*supra*, p. 7). While his primary objective at the time of this appearance was to obtain a ministerial exemption and the quotations were largely to shore up his untenable claim of ministry student or minister, nevertheless it is noteworthy that there was missing from all these citations, and missing from all the citations later advanced in his Special Conscientious Objector's

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<sup>18</sup> At certain places in petitioner's written assertions, usually in connection with biblical quotations (*supra*, pp. 7, 8), petitioner states that he is already serving as a "soldier" of Jehovah but that "the war weapons of the soldier of Jesus Christ are not carnal" (*supra*, p. 8). But these limitations are usually related to petitioner's primary basis of objection that he is a "minister", employing non-carnal, spiritual weapons—*i.e.*, his preaching—to undo the influence of Satan, and that he cannot desert his post in order to serve the *United States* (discussed *infra*, pp. 32-37). The references to non-carnal weapons are not offered as an explanation of the above reservation of the right to use mass force, and they color with an equally non-committal vagueness petitioner's assertion (*supra*, p. 9) that Jehovah's Witnesses do not arm themselves or carry carnal weapons "in anticipation of or in preparation for trouble or to meet threats." This latter would appear to mean only that Jehovah's Witnesses do not believe in preparation in advance of the outbreak of hostilities. In the context of the whole body of petitioner's statements, his one interpolated statement, "I do not use weapons of warfare in defense of myself or the Kingdom interests" (*supra*, p. 9) is probably yet another reference to his past preaching activities; it does not indicate a conscientious scruple against participation in future outright warfare if the future "Kingdom Interests" are served by participation therein.

Form, the one quotation which is the foundation stone of most conscientious objectors (Exodus 20:13) : "Thou shalt not kill." <sup>19</sup> Clearly, no absolute observance of this biblical mandate is a part of petitioner's belief.

This conclusion is fortified by reference to the public utterances of record on the part of petitioner's sect. The Department of Justice, in making its recommendations, has always taken the view that it is the individual's own belief, and not the teaching of the sect, which is the governing factor. (See the Department's instructions to its hearing officers reprinted in the Appendix, *infra*, pp. 40-44.) Nevertheless, in determining whether a particular registrant is opposed to participation in warfare on the basis of "religious training and belief", it is impossible wholly to disassociate a registrant from the teachings of his sect, particularly where, as here, the registrant states that his beliefs are those of his sect. Petitioner did not claim that his beliefs differed from or went beyond the view of his sect. He stated that he "as well as all Jehovah's Witnesses" entertained the beliefs he set forth.<sup>20</sup>

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<sup>19</sup> Exo. 23-32, cited by petitioner, "Thou shalt make no covenant with them, nor with their gods", can be read only in the context of the immediately preceding Exo. 23-31, of clearly warlike mien, "And I will set thy bounds from the Red sea even unto the sea of the Philistines, and from the desert unto the river: for I will deliver the inhabitants of the land into your hand; and *thou shalt drive them out before thee*" (italics supplied).

<sup>20</sup> Despite denial of any direction from the central organization to take any particular course of action with respect to selective service, "there seems to have been fairly widespread agreement among followers of the Watchtower Society as to

He specified the source of his beliefs as the Watchtower Bible and Tract Society and the Bible (R. 77).<sup>21</sup>

While the record does not disclose the specific Watchtower publication upon which the petitioner relied, the doctrine of the sect has been disclosed in detail in the petitioner's brief in *Witmer v. United States*, O. T. 1954, No. 164, prepared by the same counsel as here, to which is attached a copy of the Watchtower for February 1, 1951. That publication which appeared shortly before the date of the filing of the Special Form for Conscientious Objectors by the present petitioner contains two articles entitled *Why Jehovah's Witnesses Are Not Pacifists* and *Pacifism and Conscientious Objection — Is There a Difference?*<sup>22</sup> For the convenience of the Court these articles are reprinted in the Appendix to this brief *infra*, pp. 44-76.

The essence of the Witnesses's doctrine is embodied in the following statements of the pronouncement, *Why Jehovah's Witnesses Are Not Pacifists* (Appendix, *infra*, pp. 46, 52) :

\* \* \* In all that history of almost six thousand years, *the record fails to show Jehovah's Witnesses accusable of "opposition to war or*

what the basic doctrine of Jehovah's Witnesses meant for individual conduct." Sibley and Jacob, *Conscription of Conscience* (1952, Cornell University Press), p. 35.

<sup>21</sup> He asserted, for example, that he had presented a Watchtower booklet which later did not appear in his selective service file (R. 103).

<sup>22</sup> This literature exhibits some language appearing almost verbatim in petitioner's replies to questions in the form (e.g., compare Appendix, *infra*, pp. 63, 67, with *supra*, pp. 9, 10).

to the use of military force for any purpose", which is the definition of pacifism.

\* \* \* \* \*

\* \* \* They are not against war between the nations, and they do not interfere with the war efforts of the nations nor with anyone who can conscientiously join in such efforts. *They fight only when God commands them to do so*, because then it is theocratic warfare [Italics supplied].

This is an outright denial of that total opposition to participation in war which is the indispensable statutory requisite. Moreover, the interpretation of Jehovah's command, as prescribed in the pronouncements of this sect, will be made either by the individual or the leaders of the sect so that, in effect, a Jehovah's Witness merely transfers to himself or to the leaders of his sect, instead of Congress, the right to determine whether he shall participate in a war.

The use of the term "theocratic warfare" does not establish that the warfare is merely some spiritual conflict between Satan and the angels. While there are remarks that the war in which the Jehovah's Witnesses may fight are not flesh and blood wars (Appendix, *infra*, pp. 72-73), there are likewise statements to the contrary, extolling the very earthly wars of the ancient Israelites as having been proper for the participation of godly men, since they are deemed by the sect to have been at the behest of Jehovah (Appendix, *infra*, pp. 44-

51). There is a summons to Jehovah's Witnesses to be prepared to participate in a quite reasonably imminent war of Armageddon which, although occasionally referred to at certain points as a distant spiritual conflict of angels and Satan, is as persuasively referred to elsewhere as an outright war of earthly nations sanctioned by Jehovah (Appendix, *infra*, pp. 55-57).<sup>23</sup>

If this future war were deemed only some mythical spiritual conflict of angels and Satan, as distinguished from an outright earthly war in which nations would be physically vanquished, there would be no point in the sect's extensive insistence that Jehovah's Witnesses are not pacifists. A person truly opposed to any war other than some future spiritual conflict of the Deity, and truly opposed to all earthly war, is still a pacifist. The only possible effect of denial of pacifism, in the context of

<sup>23</sup> For further light on the essentially ordinary concept of earthly warfare embodied in the contemplation of future Jehovah-sanctioned war, see the summary of pronouncements in the Watchtower publication, *The New World* (1942), to be found in Sibley and Jacob, *Conscription of Conscience* (1952, Cornell University Press), pp. 32-34, in which the following theory of the Jehovah's witnesses is set out: The year 1918 was significant for Jehovah's Witnesses because it marked the entry of Jesus into the temple. Thereafter, there appeared to be a brief respite in the violent political struggles of the world. The "King of the North" mentioned in the prophecy of Daniel was the Papacy, which with its German and Central European allies had been defeated in the first world war. But the King of the North (Papacy) began to scheme to regain power, aiding in the destruction of the democracies of Germany and Spain, supporting the bloody dictator of Spain, establishing diplomatic relations with the United States in 1939, and striking—through fascist allies—in Ethiopia, Spain, Austria, and Czechoslovakia. In the end the King of the South

this sect's pronouncements, is to establish the Jehovah's Witness as one who does not oppose war but simply reserves the right to determine which war is the one of which Jehovah approves.<sup>24</sup>

The opposition is thus not to all war, but to wars not sanctioned by the Watchtower Bible and Tract Society which the registrant testified is "God's governing body here on earth." (R. 18.) This essentially leaves it to the religious body or the individual to determine for himself whether a particular war is a righteous one in which he is willing to fight. That is not the kind of opposition to war for which

(symbolically Egypt, but on the scene of twentieth-century struggle, the alliance of the United States and Great Britain) counter-attacked and the second world war was waged. But this war was not one between a man-idolizing power and a Jehovah-exalting regime and the establishment of a world federation will only see a pooling of the resources of the Northern and Southern kings. Soon afterward, the battle of Armageddon will be fought and Jehovah's Witnesses will emerge triumphant with Jehovah.

It will thus be observed that the biblical imagery of the sect is applied by it to ordinary national events, and that the future war "of Armageddon" in which Jehovah's Witnesses can, without conscientious scruple, participate, may similarly be found to be some completely flesh-and-blood war in which the sect finds an approved purpose as the embodiment of one of the symbolical names.

<sup>24</sup> *Tafts v. United States*, 208 F. 2d 329 (C.A. 8), certiorari denied 347 U.S. 928, and the decisions cited by petitioner which follow it are all based on the concept that "theocratic war" as used by the Jehovah's Witnesses is not a true war. The decisions do not analyze what was intended by that term, or the extensive correlations in Jehovah's Witness doctrine between the instances, past and future, in which the term did apply, and could again apply, to a perfectly earthly flesh-and-blood war between nations. Some of the decisions, although citing *Tafts*, do so inappropriately in that the particular registrants, while perhaps espousing the general doctrines of the sect, nevertheless specifically superimposed their own personal

Congress has granted an exemption. Congress has enacted an exemption clearly designed only for those truly possessed of a deep abhorrence of war itself.

*C. The essence of petitioner's objection is not opposition to war but rather to any governmental inroad on petitioner's religious activities.*

A further and more far-reaching reason for the denial of petitioner's claim to classification as a conscientious objector appears in the record. Viewed in their entirety, petitioner's statements show not only that petitioner has, at most, a highly qualified and variable objection to war, but that the objection to war is not the essence of his resistance at all. The opposition of petitioner is in fact an objection to any and all governmental authority to require anything of him that will take him away from the time he chooses to devote to his religious activities. As aptly summarized by the court below (R. 113) :

\* \* \* Statements made by appellant in his SSS Form 150 express an *objection to any and all obedience to secular authority*. Thus he stated that he is "no part of this world which is governed by political systems," that he conscientiously objects "to serving in any military establishment or any civilian arrangement that

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belief, which was opposed to the use of force for any but the narrowest personal self-defense. *Schuman v. United States*, 208 F. 2d 801 (C.A. 9); *Jewell v. United States*, 208 F. 2d 770 (C.A. 6); *Pine v. United States*, 212 F. 2d 93 (C.A. 4); *Weaver v. United States*, 210 F. 2d 815 (C.A. 8).

*substitutes for military service*" and that he "cannot desert the forces of Jehovah to assume the obligations of a soldier of this world without being guilty of desertion."

Two things are apparent on the face of these statements, i.e., that appellant sets himself separate and apart from all other persons as immune from the constitutional dictates of the national government and that he is asserting a claim of exemption extending to both military and civilian service under the Act, a claim which goes beyond the statutory exemption. 50 App. U.S.C. Sec. 456(j). *These claims are consistent only with objections to any command of governmental authority*, but do not per se establish that deep seated conscientious belief which would entitle appellant to the claimed exemption. \* \* \* [Italics supplied.]

The Court of Appeals for the Ninth Circuit, in two recent decisions, has observed the same attitude and rejected the claims of registrants of this sect to exemption from non-combatant service, citing and following the decision below. *White v. United States*, 215 F. 2d 782 (C. A. 9); *Tomlinson v. United States*, 216 F. 2d 12 (C. A. 9), petitions for certiorari pending this term, Nos. 390 and 391. In both cases the registrants objected to classification as available for noncombatant service in the armed forces<sup>25</sup> and in both cases the court found that their religious beliefs were not an opposition

<sup>25</sup> They were absolved from combatant service by specifically stated objections to killing.

to noncombatant service but a general opposition to interference with their part-time religious work. In the *Tomlinson* case, *supra*, the Court of Appeals for the Ninth Circuit stated (216 F. at 2d at 18):

The appeal board may well have been of the view that this registrant is primarily an objector who will have nothing to do with the affairs "of this world." True he is conscientiously opposed to killing; but his real objection to noncombatant service would appear to be its interfering with his carrying the "message" and doing what he chose to call "ministerial work." We think that in drawing the line where it did, it cannot be said that the appeal board acted without basis in fact. The board could well understand from appellant's representations that his objections would include such tasks for a government of "this world" as fighting forest fires or building roads. An objection, on religious grounds, to any assignment which would take the registrant away from his missionary activities, is not an objection which the Act recognizes.

It is not the position of the government that a registrant's broad religious motive to continue religious activity would vitiate a clear objection to war, if one truly existed, but it is apparent in the instant case that the whole and exclusive essence of the refusal to obey the law is an insistence on unlimited choice of time for religious activity. The time required for service under the law is begrudged by

petitioner because of resistance to any interference with petitioner's wishes as to religious activity, and war happens to be the cause of that interference. In other words, petitioner's request is that his religion be accorded a broad, general religious exemption beyond the exemption of ministers—but his belief is one which is not concerned in any reasonably proximate degree with opposition to war.

Thus, in his classification questionnaire (*supra*, p. 6), petitioner failed even to state that he was a conscientious objector, despite the specific instruction in the form, making it mandatory to state that fact.<sup>26</sup> This omission is here adduced, to show the nature of his belief as one in which conscientious objection to war as such played no essential part. Throughout a whole array of documents and protestations, no mention of objection to war appears. In ten affidavits and letters of his fellow sect members and himself not a word concerning objection to war has crept in (R. 60-66, 69-70, 75, 86-87, 97). This, we submit, is not adequately explained away by the fact that petitioner was then trying for the exemption accorded a minister. Had petitioner had the type of real abhorrence to war for which the conscientious objector classification was intended, it would have been natural to announce it, regardless of any other claim for deferment. As a matter

<sup>26</sup> SSS Form No. 100: "INSTRUCTIONS.—Any registrant who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form *shall* sign the statement below requesting a Special Form for Conscientious Objector (SSS Form No. 150) from the local board. (Italics supplied.)

of fact, the record as a whole makes it clear that petitioner sought the conscientious objector deferment only secondarily and that his real object, and his real basis for seeking such deferment, was to avoid the necessity of submitting to any form of government authority.

Even in the final paragraph of an extensive letter in the last fading try for ministerial exemption, the talk of prior membership in Jehovah's army is adduced only as a basis of ministerial exemption and there is not even a reference to the concurrent claim of exemption as a conscientious objector (R. 72-74). And, as noted *supra* (p. 27), the biblical quotations which petitioner relied upon in his personal appearance before the board conspicuously failed to include the cornerstone of conscientious objection, Ex. 20:13 "Thou shalt not kill."

Finally, the essence of petitioner's basis of refusal is eloquently expressed in the closing phrase, quoted *supra*, p. 10, in which he summarized the whole thrust of his religious belief:

\* \* \* For this important Bible reason I am letting you know that I conscientiously object to serving in any military *establishment* or any civilian arrangement that substitutes for military service.

Objection to war as such does not extend to the condemnation of every and any "civilian arrangement." The religious doctrine which here demands so broad an exemption is one actually and in essence opposed to the according to government of

any time to be taken from participation in religious activity. Congress has granted no religious sect such an exemption directly and no such exemption is to be effected by indirect application of the exemption for conscientious objection to war.

*D. The denial of petitioner's claim to classification as a conscientious objector thus had a basis in fact.*

In light of the foregoing considerations, the Court of Appeals was plainly correct in sustaining the conclusion of the District Court, the selective service appeal board, and the Department of Justice, that petitioner failed to show the conscientious objection required under the narrow statutory exemption. As was clearly enunciated in *Estep v. United States*, 327 U. S. 114, 122-123, and innumerable times thereafter in the decisions of the courts, including the recent affirmation of this Court in *Dickinson v. United States*, 346 U. S. 389, 394:

\* \* \* The provision making the decisions of the local boards "final" means to us that Congress chose not to give administrative action under this Act the customary scope of judicial review which obtains under other statutes. It means that *the courts are not to weigh the evidence to determine whether the classification made by the local boards was justified*. The decisions of the local boards made in conformity with the regulations are final even though they may be erroneous. *The question of jurisdiction*

*tion of the local board is reached only if there is no basis in fact for the classification which it gave the registrant.* [Italics supplied.]

The dissent in *Dickinson*, 346 U.S. 397-401, would go even further in recognizing finality in selective service classifications, but clearly there was no disagreement in this Court that the test was not the customary administrative law rule of "substantial evidence". When the Court had expressed the same position in *Cox v. United States*, 332 U.S. 442 at 448, Mr. Justice Murphy, in his dissent, underlined the significance of the holding of the majority by pointing out (332 U.S. at 457) "Less than a substantial amount of evidence is thus permitted to legalize the classification." and by referring to the majority's ruling as upholding classifications supported by (332 U.S. 458) "an inappreciable amount of supporting evidence \* \* \* a wisp of evidence or a speculative inference."

It is on the basis of these repeated statements of this Court that the court below pointed out that the cases relied upon by petitioner, *Annett v. United States*, 205 F. 2d 689 (C.A. 10); *Taffs v. United States*, 208 F. 2d 329 (C.A. 8), certiorari denied, 347 U.S. 928; *United States v. Hartman*, 209 F. 2d 366 (C.A. 2); and *United States v. Pekarski*, 207 F. 2d 930 (C.A. 2), "rest on an incorrect theory of judicial review, thus rendering their authoritative value speculative" in that they apply a rule of "substantial evidence" (R. 112).

These limitations on court review are the more

to be observed in a case where conflicting and vague utterances are offered in lieu of frank, unqualified abjuring of mass force which is necessary to justify the exemption. The Selective Service System could properly conclude that petitioner had not shown that abhorrence to war which alone is the basis for the statutory exemption.

**CONCLUSION**

For the reasons set forth above, it is respectfully submitted that the judgment of the court below should be affirmed.

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JANUARY 1955.

**APPENDIX****ADDENDUM NO. II TO INSTRUCTIONS BY DEPARTMENT OF JUSTICE TO HEARING OFFICERS APPOINTED PURSUANT TO THE UNIVERSAL MILITARY TRAINING AND SERVICE ACT****"OPPOSITION TO WAR IN ANY FORM"**

Members of the Jehovah's Witnesses sect present some of the most difficult conscientious objector cases which come before Hearing Officers under the applicable provisions of the Universal Military Training and Service Act. Many of them rely upon the dogma of that sect with respect to war and pacifism as outlined in various publications of the Watchtower Bible and Tract Society. Among these publications are the February 1, 1951, issue of the *Watchtower* magazine, the November 1, 1939, issue of this periodical and a pamphlet entitled "Neutrality." They present a defense of the battles of the Old Testament and the future Battle of Armageddon as warfare ordained by Jehovah in behalf of theocratic government. Articles appearing in this literature state emphatically that members of the organization are not pacifists and that they are permitted to fight and kill in defense of themselves, their families, their property, and their spiritual brethren. They may fight whenever "Kingdom interests" are jeopardized, but they should be neutral in wordly conflicts.

It might be helpful to incorporate at this point, several statements appearing in the February 1, 1951, issue of the *Watchtower* referred to above.

The following excerpts which are taken from an article entitled "Why Jehovah's Witnesses Are Not Pacifists" reveal in unmistakable terms the church's thinking on the question of pacifism and its relation to conscientious objection:

"The smearing of us as extreme pacifists is without foundation and is a deliberate lie to provoke prejudice against us . . . Extreme pacifism is not our preaching. We are not pacifists . . . to charge that we are extreme pacifists is a lie.

"As defined by Webster's New International Dictionary pacifism means 'opposition to war or to the use of military force for any purpose; especially an attitude of mind opposing all war, emphasizing the defects of military training and cost of war and advocating settlement of international disputes entirely by arbitration.' Such pacifism not even the Bible itself can be charged with teaching and neither can Jehovah's Witnesses who stick most scrupulously to the Bible."

The article continues by tracing the history of Jehovah's Witnesses to Biblical times and then declares: "In all that history of almost six thousand years, the record fails to show Jehovah's Witnesses accusable of 'opposition to war or to the use of military force for any purpose' which is the definition of pacifism." There follows a discussion and justification of the wars engaged in by the pre-

Christian witnesses of Jehovah. Such conduct is explained and defended in this manner:

“But you ask how can they be conscientious objectors and not at the same time pacifists? They are not against war between the nations and they do not interfere with the war effort of the nations nor with anyone who can conscientiously join in such efforts. *They fight only when God commands them to do so because then it is theocratic warfare.*”

These sentiments are reiterated in other Jehovah’s Witnesses literature although in different language. Notwithstanding these pronouncements on the subject of war and pacifism, the church maintains that any member who professes to be a conscientious objector does so as a matter of individual conscience and as a result of his independent study of Scripture.

In view of the stand which the church has adopted on this question, the Department of Justice has taken the position that mere membership in this sect is not a basis for granting or denying a conscientious-objector claim. It is entirely possible for a registrant to have an individual personal religious belief that war in any form is ungodly and mere membership in the Jehovah’s Witnesses sect will not negate that belief.

The burden of proof is of course upon the registrant to show by clear and convincing evidence that he comes within the provision of section 6(j) of the Universal Military Training and Service Act.

However, it should not be assumed that the registrant has adopted his church's views on warfare as his own, unless he has in some way affirmatively so indicated. He can do this in several ways. He may incorporate in his file any of the periodicals referred to above or other literature of his sect bearing on this subject in order to explain statements appearing in his Conscientious Objector Form. He may also embrace these pronouncements by his own declaration appearing in SSS Form No. 150 or other correspondence in his file. They may be developed by the Hearing Officer during the course of the hearing.

No absolute standard or criterion can be established in this type of claim. Each case stands or falls on its individual merits. It can only be suggested that the Hearing Officer examine very carefully the entire record in order to ascertain whether the particular registrant will participate in warfare under any circumstances. If the registrant's expressions on this point are ambiguous or contradictory then questions should be propounded to him during the course of his personal appearance which will resolve any uncertainties in this regard. If the Hearing Officer feels that the registrant has indicated sincere religious convictions which depart from official church doctrine insofar as it touches upon the question of opposition to participation in war "in any form" then the claim should be sustained. However, if it is concluded that the registrant's statements are merely an acceptance of his church's teaching as it relates to participation in

war in any form, the registrant is not entitled to exemption as a conscientious objector.

It should be noted that if a registrant indicates a willingness to participate in theocratic warfare or war in any other form he is not entitled to a conscientious-objector classification; however, his approval of the use of force under certain circumstances, which force is not in the nature of warfare, does not *per se* disqualify him for such classification. Personal defense of himself, his family, or even his brethren to the extent of killing is an element to be considered in connection with the sincerity of his claim, especially where such claim is based upon the Commandment "Thou shalt not kill," but would not, unless the defense of his brethren is construed to be a common defense amounting to warfare, defeat his claim if the Hearing Officer concludes from all the evidence that his claim is made in good faith.

## THE WATCHTOWER

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**WHY JEHOVAH'S WITNESSES ARE NOT PACIFISTS**

*"Jehovah is a man of war; Jehovah is his name."*

*Ex. 15:3, AS; Yg.*

"JEHOVAH'S witnesses! Just a bunch of pacifists!" So a great many people will exclaim with scorn. And so they have been led to think by the charges hurled at these by their enemies. But are the witnesses pacifists, seeking refuge under the cover

of "conscientious objection" because they are afraid to fight? Let us here honestly search for the right and fair answer to this hot question. What have they to say for themselves?

At the 1950 international assembly of Jehovah's witnesses in Yankee Stadium, New York city, 10,000 foreign delegates were there from more than sixty other lands. Most of these had been subjected to great religious discrimination, embarrassment, hardship and inconvenience because they were obliged to clear themselves of the false charge of "extreme pacifism". An indignation meeting was held Friday afternoon, August 4, at the assembly, at which the 70,000 American delegates in the presence of these foreign brothers unanimously passed a "Regret and Protest", and at the close of the afternoon's session a million copies of this were distributed. This 4-page paper vigorously called attention to the "Discrimination on False Charge of Pacifism" and said: "The smearing of us as extreme pacifists is without foundation and is a deliberate lie to provoke prejudice against us and this international assembly. They have done as the Scriptures prophesied, 'framed mischief by law.'—Psalm 94:20. Extreme pacifism is not our preaching. We are not pacifists. . . . To charge that we are extreme pacifists is a lie."

As defined by Webster's *New International Dictionary* (2d edition, unabridged, of 1943) *pacifism* means: "Opposition to war or to the use of military force for any purpose; especially, an attitude of mind opposing all war, emphasizing the defects of military training and cost of war, and advocating

settlement of international disputes entirely by arbitration.” Such pacifism not even the Bible itself can be charged with teaching, and neither can Jehovah’s witnesses, who stick most scrupulously to the Bible.

When expressing a judgment upon Jehovah’s witnesses people are inclined to think of them as a religious body less than a century old. True, this unique name came into the limelight in 1931, when, by public acclamation, these faithful Christians all over the earth adopted resolutions rejecting the contemptuous names the enemies had tagged onto them and accepting the Scriptural name “Jehovah’s witnesses”. But their history is much longer than a century. Already in the eighth century before Christ the prophecy declared to God’s chosen people: “Ye are my witnesses, saith Jehovah, and my servant whom I have chosen: . . . I have declared, and I have saved, and I have showed; and there was no strange god among you: therefore ye are my witnesses, saith Jehovah, and I am God.” (Isa. 43: 10-12, AS) In fact, the history of Jehovah’s witnesses runs all the way back to Adam’s son Abel, whom his brother Cain killed because Abel had received favorable witness from Jehovah God. The apostle Paul, in chapters 11 and 12 of his letter to the Hebrews, shows that fact. In all that history of almost six thousand years the record fails to show Jehovah’s witnesses accusable of “opposition to war or to the use of military force for any purpose”, which is the definition of pacifism.

We could go through the list of Jehovah’s wit-

nesses from Abraham onward to show they were not pacifists. The apostle Paul tells us about Abraham "returning from the slaughter of the kings" and receiving the blessing of King Melchizedek. (Heb. 7:1-4; Gen. 14:14-21) He tells of Moses who led the Israelites to the borders of the Promised Land. Then he mentions one high light in Joshua's war to purge the Promised Land of the immoral pagan inhabitants, and adds: "And what more shall I say? For the time will fail me if I go on to relate about Gideon, Barak, Samson, Jephthah, David as well as Samuel and the other prophets, who through faith defeated kingdoms in conflict, effected righteousness, obtained promises, stopped the mouths of lions, stayed the force of fire, escaped the edge of the sword, from a weak state were made powerful, became valiant in war, routed the armies of foreigners." (Heb. 11:30-34, NW) Every one that Paul there names was a fighter. Jehovah gave them victory. Only because Jerusalem proved unfaithful to God after repeated warnings by his witnesses Jehovah yielded the Jews over to the Babylonian armies and did not fight for them. He had forewarned them of punishment for disobedience, and so he let that come upon them in vindication of his word.—Deut. 28:36-67.

#### NEHEMIAH, MORDECAI AND ESTHER FIGHTERS

Seventy years the Jews or Israelites were exiles in Babylonian provinces. Did they join the armies of Babylon and fight for its world domination? No; although some Jews, like Daniel and his three He-

brew companions, were taken into the governmental service in spite of their conscientious worship of Jehovah God. Government servants of high rank those three Hebrews might be, yet they refused to violate their conscience and bend to Emperor Nebuchadnezzar's decree and commit idolatry, saluting the image of the political state, the golden image which the dictatorial ruler had set up for united worship by all elements of his empire. (Dan. 3: 1-30) When Babylon was overthrown, the captive Israelites were not mixed in with Babylon's armies fighting against its overthrow. They knew Jehovah's prophecies had foretold its overthrow, and so why fight against fulfillment of divine prophecy, and for an oppressive world power at that?

Under the new rule of the victorious Medes and Persians the aged Daniel was taken into the government service of King Darius the Mede. He became the leading president of all the king's satraps. When the jealous enemies could find no occasion against Daniel except in his faithful obedience to the law of his God Jehovah, then they framed mischief against him by law. Though faced with being thrown into the lion's den, and with his governmental office at stake, Daniel refused to violate his conscience. He did not bow to the imperial law which was against praying to Jehovah and required everybody to look to the political state for everything. Daniel rendered to the emperor only what belonged to him, but to God the worship and obedience that belonged to him. God shut the lions' mouths for him, but those who framed mischief against him by

crafty law were themselves thrown to the lions.—  
Dan. 6:1-28.

Cyrus the Persian succeeded Darius as ruler. In his first year the captive Jews were let return to the site of Jerusalem and rebuild Jehovah's temple. They did not have to fight for their liberation by force of military arms, but Almighty God restored them for his name's sake and because they repented and devoted themselves to his worship. But even after this restoration to their homeland the Jews did not become pacifists.

This fact is noteworthy in the case of Nehemiah. He was a Jew in governmental service as cupbearer and close consultant of the Persian king Ahasuerus. He was made governor of the Jewish province in Palestine and was sent to build good walls for the restored city of Jerusalem. The pagan enemies accused Nehemiah of trying to secede from the empire. "And they conspired all of them together to come and fight against Jerusalem, and to cause confusion therein." What action did Nehemiah take? He did not leave God out of consideration, because he knew that "except Jehovah keep the city, the watchman waketh but in vain". (Ps. 127:1, AS) So the record informs us: "But we made our prayer unto our God, and set a watch against them day and night, because of them. . . . And I looked, and rose up, and said unto the nobles, and to the rulers, and to the rest of the people, Be not ye afraid of them: remember the Lord, who is great and terrible, and fight for your brethren, your sons, and your daughters, your wives, and your houses." From then on

the builders carried on construction of the wall armed with spears, shields, bows, coat of mail, and swords girded at their side. The conspiracy was thus foiled. (Neh. 4:8-23, AS) God's cause was involved and the liberty of his people to worship him freely. That was why those Israelites had chosen to fight. It was not for the glory and power of the Persian empire that they fought. They fought for their brothers who belonged to God's organization and who worshipped him.

In other provinces of the Persian empire there was also no pacifism on the part of the Jews. Over sixty years after the restoration of a Jewish remnant to Jerusalem the Jews throughout the empire were accused by a religious enemy in high governmental position. They were different from all other people; besides the law of the empire they had Jehovah's laws governing their worship of God. So the wicked enemy Haman said: "Their laws are diverse from those of every people; neither keep they the king's laws: therefore it is not for the king's profit to suffer them." And he requested and got a law passed to have them destroyed before ever another passover rolled around.—Esther 3: 8-15 AS.

Under the counsel of Mordecai the Jew, Queen Esther carried a legal fight to the highest judicial figure of the empire, King Ahasuerus himself. At the risk of her own life she pleaded for relief for her people, at the same time exposing the mischievous designs of their religious enemy Haman. The wicked persecutor was hanged on gallows he had built for Mordecai, and Mordecai was advanced to

higher office in the Persian government. By authority of the emperor he wrote a law into the government statutes, providing for the Jews on the fixed day of assault by their foes "to gather themselves together, and to stand for their life, to destroy, to slay, and to cause to perish, all the power of the people and province that would assault them, their little ones and women". Did the Jews pacifistically refuse to act upon this law for their self-defense by force of arms? No! On the 13th and 14th days of their last month Adar, they fought valiantly for the defense of their own lives and those of their brothers. Jehovah God was with them in this and handed them the victory and fulfilled his own prophetic command to have the Amalekites wiped out to a man. The Jews, his witnesses, he used as his executioners.—Esther 8:10 to 9:16; Ex. 17:13-16, AS.

#### NO SHIFT TO PACIFISM AT THE WORLD'S END

Many of our readers or public officials may ask: If Jehovah's witnesses of today are linked up in one unbroken chain with those witnesses of ancient times with such a history, why is it that they do not carry out this tradition of military combat? Why are they not found in the ranks of the armies of Christendom? Why do they seek exemption from military service? Why do they go so far as even to refuse to enter the Public Service camps maintained for or by pacifists and conscientious objectors, or take any part in the defense or war effort? Ask Jehovah's witnesses why, and they will tell you it is not because they have turned pacifist.

It is because they have conscientious objection to taking part in such war and defense efforts of Christendom and the rest of the world, their objection being based on God's Word, the Bible. But, you ask, how can they be conscientious objectors and not at the same time pacifists? They are not against war between the nations, and they do not interfere with the war efforts of the nations nor with anyone who can conscientiously join in such efforts. They fight only when God commands them to do so, because then it is theocratic warfare.

**Were Jehovah's witnesses today to claim to be pacifists, it would mean for them to denounce all the pre-Christian witnesses of Jehovah who took up arms to uphold Jehovah's universal sovereignty and his theocratic nation of Israel.** But this denunciation we cannot make. Jesus Christ never did so, and he is Jehovah's greatest witness, who has earned the title "The faithful and true witness". (Rev. 3:14) Jehovah himself is no pacifist. **Neither are his witnesses such, although they are conscientious objectors.** Jesus was no pacifist, although there is no record that he ever took up carnal weapons in self-defense. Ah, you say, but did not Jesus make a whip of cords to drive all the commercial venders from the temple at Jerusalem? Yes, but the record does not say he used this whip on the men who were doing the selling but he used it upon their sheep and cattle which they had brought into that sacred place, "making the house of my Father a house of merchandise."—John 2:13-16, NW.

Again you object, Did not Jesus, after setting up the Memorial with his disciples, tell them before going out to Gethsemane, "Let the one having no sword sell his outer garment and buy one"? And when his disciples said, "Master, look! here are two swords," he said to them, "It is enough." (Luke 22:36-38, NW) Yes; but by this Jesus indicated to them that he was to be seized by an armed band, under circumstances which could provoke armed resistance. The facts that developed showed Jesus did not resort to a sword when his illegal arrest came. Why, then, did he suggest getting a sword and let at least one sword be taken along to Gethsemane? He did it to show that he chose not to resort to armed resistance but would give himself up voluntarily in harmony with his Father's will. Peter tried to put up armed resistance, used the sword and struck off a man's ear. Then Jesus said to Peter: "Return your sword to its place, for all those who take the sword will perish by the sword. Or do you think that I cannot appeal to my Father to supply me at this moment more than twelve legions of angels? In that case, how would the Scriptures be fulfilled that it must take place this way?" (Matt. 26: 52-54, NW) According to John's account Jesus added: "The cup that the Father has given me, should I not by all means drink it?" (John 18:11, NW) So we see why Jesus acted in a way that to some seems like pacifism. He was, however, not going before his Father's court or before the courts of the land on a charge of armed resistance. He did not expose himself to being

killed under armed resistance; he must die willingly, sacrificially, like a lamb led to slaughter.

#### CONSISTENT WITH PROPHECY AND THEIR MESSAGE

Jehovah's witnesses copy Jesus and obey his instructions. That is why they have not joined worldly armies and taken part in the war efforts of the nations in any way. This does not mean they are pacifists opposed to war and resisting it and interfering with worldly governments in prosecuting wars of aggression or of defense. They could not be war-resisters, for they submit to the fulfillment of Jesus' words concerning the consummation of this system of things. Asked by his disciples, "Tell us, When will these things be, and what will be the sign of your presence and of the consummation of the system of things?" he told them: "You are going to hear of wars and reports of wars; see that you are not terrified. For these things must take place, but the accomplished end is not yet. For nation will rise against nation and kingdom against kingdom, and there will be food shortages and earthquakes in one place after another. All these things are a beginning of pangs of distress." (Matt. 24: 3, 6-8, NW) So how could the Christian witnesses of Jehovah oppose worldly wars or try to prevent them since Jesus prophesied that they were certain to be fought? Jesus did not tell them they would be in the fighting. They would merely hear the wars being fought within their earshot or else hear the reports about the wars fought elsewhere.

Were Jehovah's witnesses today to be pacifists

then, to be consistent, they would have to oppose Jehovah's war against the Devil's entire world at the battle front of Armageddon. They have seen the nations of this world assault God's visible organization of his people, prophetically spoken of as "Jerusalem", during the world war of 1914-1918, as foretold in Zechariah. Now they look for the rest of his prophecy to be carried out shortly, namely: "Then shall Jehovah go forth, and fight against those nations, as when he fought in the day of battle. . . . Jehovah my God shall come, and all the holy ones with thee . . . And Jehovah shall be King over all the earth: in that day shall Jehovah be one, and his name one." (Zech. 14: 1-3, 5-9, AS) There will be a great slaughter then, foreshadowed by the slaughter of God's united enemies who were marching to the attack on Jerusalem in the days of King Jehosaphat. Hence he calls the field of slaughter "the valley of Jehoshaphat" and invites all the nations of this world to come down into it. (2 Chron. 20: 1-25) He issues the command:

"Proclaim ye this among the nations; prepare war; stir up the mighty men; let all the men of war draw near, let them come up. Beat your plowshares into swords, and your pruning-hooks into spears: let the weak say, I am strong. Haste ye, and come, all ye nations round about, and gather yourselves together: thither cause thy mighty ones to come down, O Jehovah. Let the nations bestir themselves, and come up to the valley of Jehoshaphat; for there will I sit to judge all the nations round about. Put ye in the sickle; for the harvest is ripe:

come, tread ye; for the winepress is full, the vats overflow; for their wickedness is great. Multitudes, multitudes in the valley of decision! for the day of Jehovah is near in the valley of decision. The sun and the moon are darkened, and the stars withdraw their shining. And Jehovah will roar from Zion, and utter his voice from Jerusalem; and the heavens and the earth shall shake: but Jehovah will be a refuge unto his people.”—Joel 3:9-16, AS.

Jehovah’s witnesses of today are the ones commanded to make this proclamation to the nations, and this they are doing. So how could they do this and the same time be pacifists?

By his acts since A.D. 1914 Jesus Christ could never be accused of being a pacifist. Why not? Because since that date Satan the Devil and his demons have been cast out of heaven and he has come down to our earth with great wrath, knowing that now he has a short time. The unspeakable woes today smiting earth and sea, coupled with all the other fulfillments of prophecy, prove this fact. How was Satan hurled down here? Revelation 12: 1-12 answers that after the birth of God’s kingdom and the enthronement of his Son Jesus Christ “war broke out in heaven”. No pacifist, it was this King Jesus Christ who battled against Satan and his demons and hurled them down to his footstool, the earth. Now the humiliated Satan is using his demons to drive all the nations to Armageddon for the “war of the great day of God the Almighty”. (Rev. 16: 14-16, NW) But who are Jehovah’s “mighty ones” whom Jehovah brings down to the

"valley of decision" in order to settle forever the paramount issue of world domination? They are the "Lamb of God" and the angels who fought under him in the "war in heaven" against Satan. On earth this lamblike One looked like a pacifist, but now he is the "Lion of the tribe of Juda". (Rev. 5: 5, 6) To this fearless warrior Psalm 110: 4-6 (AS) says: "The Lord\* at thy right hand will strike through kings in the day of his wrath. He will judge among the nations, he will fill the places with dead bodies; he will strike through the head in many countries." Read the graphic description of this royal warrior of Jehovah God, at Revelation 19:11-16. Let all the militarized nations know that they will all meet lasting defeat in that universal war of Armageddon and the armaments race will be at last halted for all time.

After Armageddon those who have survived on the winner's side, Jehovah's side, will enjoy a perfectly guaranteed peace. Then they will "beat their swords into plowshares, and their spears into pruninghooks: nation shall not lift up sword against nation, neither shall they learn war any more".— Isa. 2:4.

### PACIFISM AND CONSCIENTIOUS OBJECTION —Is THERE A DIFFERENCE?

HAVING a good conscience toward God does not make a person a weakling or a coward. Jehovah's

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\* One of the 134 places where the Hebrew *sopherim* changed the word *Jehovah* in the Hebrew text to *Adonai*, meaning "The Lord". See *Cath. Conf. Psalms*.

witnesses show courage to follow their conscience in these martial times. It is only due to conscience that they have personally and legally objected before draft boards to participating in the armed conflicts and defense programs of worldly nations. In this course their consciences are not warped, but are instructed in what is right, for they are instructed in the Scriptures, God's Word. With the apostle Paul they say: "I am exercising myself continually to have a consciousness of committing no offense against God and men." (Acts 24: 16, NW) So their consciences are clear, no matter how the militaristic minds of this world may criticize them.

Well, then, if not pacifists, what Scriptural reasons have they given for refusing all part in international war? Repeatedly President Truman of the United States has said he believes in the "sermon on the mount" and that he wants the world to know that Americans believe in the sermon on the mount. Jehovah's witnesses trust that the American president and his colleagues mean the entire sermon. Why? Because it includes not only the so-called "Golden Rule" but also Jesus' words: "You heard that it was said, 'Eye for eye and tooth for tooth.' However, I say to you: Do not resist him that is wicked; but whoever slaps you on your right cheek, turn the other also to him. And if a person wants to go to court with you and get possession of your undergarment, let your outer garment also go to him; and if someone under authority impresses you into service for a mile, go with him two miles. Give to the one asking you, and do not

turn away from one that wants to borrow from you without interest. You heard that it was said: 'You must love your neighbor and hate your enemy.' However, I say to you: Continue to love your enemies and to pray for those persecuting you; that you may prove yourselves sons of your Father who is in the heavens, since he makes his sun rise upon wicked people and good and makes it rain upon righteous people and unrighteous."—Matt. 5: 1, 2, 38-45, NW.

Was Jesus there teaching pacifism? No; but thus he disclosed that his followers must not be disposed to injure anyone else, even under provocation, where merely personal matters are concerned. They should not resort to the Law of Talion or Retaliation, handed down by Moses, at Exodus 21: 23-25 and Leviticus 24: 19, 20. But even where eye was to go for eye, tooth for tooth, life for life, this like for like was not to be exacted personally by the one hurt. The balancing of accounts was to be laid before the legal authorities, rather than for the injured one to take the law into his own hands. That was the law given through Moses. But Jesus Christ is the Prophet whom Jehovah promised to raise up greater than Moses, and so Jesus' law is superior and supersedes the Mosaic law. (Deut. 18: 15-19; Acts 3:20-23) Hence we must heed what he says in the sermon no the mount if we are faithful as his followers.

A real keeper of the sermon on the mount will not resist a wicked person, taking advantage of the law of retaliation to give like for like, injury for injury,

where it is purely a personal affair and where fulfillment of his commission to serve God is not directly involved. The Lord Jesus was struck on the cheek in the Jewish Supreme Court, but did not turn the other cheek, except in a figurative way. He merely said to the officer that slapped his face: "If I spoke wrongly, bear witness concerning the wrong; but if rightly, why do you hit me?" (John 18: 19-23, NW) Later in the same court Paul was struck in the mouth for saying: "I have behaved before God with a perfectly clear conscience down to this day." For this legal outrage Paul said to the high priest presiding: "God is going to strike you, you whitewashed wall. Do you at one and the same time sit to judge me in accord with the Law and, transgressing the Law, command me to be struck?" By skillful argument Paul divided the court against itself, so that he was not affected by their judgment but was taken before a Roman court.—Acts 23: 1-11, NW.

So Christians must not take the law into their own hands, to return an injury to others. Rather ignore the personal wrong and show the mental attitude of Christ and go on with his service. Let the wicked abuser remember your self-restraint rather than any hurt he might have gotten from you in return, which hurt would prove you are as violent as he is. If the final judgment of a court of last instance goes unfairly against you and it awards more than the personal effects that the person who has taken you to law wanted, let him have, as it were, your upper garment as well as undergarment.

It is a personal case, not forcing you to go contrary to God's law. And so you can show you do not set your affections on perishable material things but have the strength to take personal injuries just as your Leader Jesus did. If some peaceful officer of the government in the discharge of his duties comes upon you and calls on you to render an aid that any other citizen could be called on to render, such as accompanying him as guide for a mile, then be generous. Go with him two miles if it will be to the public's good through his government service. As you accompany him, show him what a witness of Jehovah is in word and practice. Show proper respect for orderly government, even if it is human. Uphold the legal processes of the land and the laws that are not against righteousness and God's law. By loving acts and by prayer show yourself willing to help even your enemies and persecutors to find the way to salvation. Do not let their unjust acts provoke hatred that seeks only for hurt and destruction to befall your personal enemies.

Exodus 22: 2, 3 has been referred to to show that there may be cases where Jehovah's witnesses may show they are not pacifists by killing. According to the *American Standard Version* these verses read: "If the thief be found breaking in, and be smitten so that he dieth, there shall be no bloodguiltiness for him. If the sun be risen upon him, there shall be bloodguiltiness for him." But Moffatt's translation (with which *An American Translation* agrees) reads even more clearly: "It a thief is caught breaking into a house and struck so that he dies, the house-

holder is not guilty; but if it was after dawn, the householder is guilty.”

In the darkness of night the burglar could not be identified if he escaped, and so he might be struck to halt him. If the blow was fatal and the breaker-in died, then the person protecting his property was guiltless. But if he broke in during daylight and was struck a fatal blow, then the striker was guilty of killing the thief. It was daylight and he could identify the thief and report him to the Law and have the Law apprehend him and compel him to make restitution and suffer a fine too. But in killing the thief the protector of property was going too far. Certainly all the property that a daylight thief could break in and steal is not equal to the value of his life. In having reparation made for what he stole the Law could not require the thief's life. “What will a man give in exchange for his soul [or, life]?” (Matt. 16: 26, NW, margin) If the daylight thief got away, or if the invading aggressors got away, and the Law never was able or failed to bring them to justice, then though we have suffered the loss of material goods we have not brought bloodguiltiness upon ourselves. So respect for the Law is good.

What is said above in reference to turning the other cheek and submitting to public officials in private or personal matters does not mean that Jehovah's witnesses do not defend the Kingdom interests, their preaching, their meetings, their persons, their brothers and sisters and their property against attack. They defend those when they are

attacked and are forced to protect such interests, and Scripturally so. They do not arm themselves or carry carnal weapons in anticipation of or in preparation for trouble or to meet threats. They try to ward off blows and attacks in defense only. They do not strike in retaliation. They do not strike in offense, but strike only in defense. They do not use weapons of warfare in defense of themselves or the Kingdom interests. (2 Cor. 10:4) While they do not retreat when attacked in their homes or at their meeting places, they will retreat on public or other property and ‘shake the dust off their feet’, so ‘not giving what is holy to dogs’ and ‘not throwing their pearls before swine’. (Matt. 10:14; 7:6) So they retreat when they can do so and avoid a fight or trouble. They have a right to appeal and do appeal to officers of the law to come to their help in defense against attack or mob violence.

## HOW THOSE UNDER VOWS PAY BACK WHAT IS DUE

Boards, agencies and officials of the government are told that obedience to instructions in the sermon on the mount does not fit in at all with Jehovah's witnesses' rendering everything to Caesar, thus making such ministers of God obliged to render unquestioning obedience to commanders who do not follow the law of God. But the above instructions from the sermon are only *part* of the compelling reason why Jehovah's witnesses raise conscientious objections to subjecting themselves to military service and why they take advantage

of the provisions allowing exemptions. In the United States of America the Selective Service Act of 1948, which controls the decisions of draft boards and public officials, provides for the deferment of conscientious objectors and also for the exemption of those under vows to God. Section 6 (j) provides for deferment of "any person" whose "training and belief . . . in a relation to a Supreme Being involving duties superior to those arising from any human relation" prevent such person from turning aside from those SUPERIOR DUTIES which he owes to the Supreme Being.

A person cannot become a Christian witness of Jehovah unless he takes a vow by which he fully devotes himself to God through Jesus Christ and so assumes superior duties. He acknowledges God as the Supreme Being and Fountain of life and the Provider of the way to eternal life. (Ps. 3:8; 36:9) He approaches God through Jesus Christ. He acknowledges Jesus as the Son of God who laid down his human life for him, thus providing a purchase price for him. No political state, no "Caesar" or emperor or dictator, can do these things for the dying sinner. And so he does not attribute his debt of life to any political system, but attributes his life to God and seeks to render it to him through Christ. He acknowledges that these Scriptures apply to him: "Ye are not your own. For ye are bought with a price: therefore glorify God in your body, and in your spirit, which are God's." "Ye are bought with a price; be not ye the servants of men." (1 Cor. 6:19, 20; 7:23) So their lives and

their implicit obedience and superior duties they render to God as belonging to him; and they surrender their lives in God's service and not in that of any men.

But Jesus told the Jews, who were in a covenant with God and under vow to him: "Render therefore unto Caesar the things which are Caesar's and unto God the things that are God's." (Matt. 22:21) What, then, are we to render to Caesar? Certainly not our lives, for we never did owe these to Caesar and they do not belong to him. Why, what life Caesar himself possesses he owes to God, not to himself as an immortal god. For this reason authentic history shows that Christians of the first century did not expose their lives to the risks of carnal warfare by joining Caesar's imperial armies, but took the penalty that Caesar imposed for their refusing to be inducted into his armies. In this course those early Christians had Jesus as their example, Leader and Instructor. Jesus lived within Caesar's realm, because by military aggressions imperial Rome had conquered Palestine. After laying down the law for his followers, "Pay back . . . Caesar's things to Caesar" (NW), Jesus himself did not enlist in Caesar's armies. He knew that God and Caesar are not friends. That is why Caesar through his governor Pilate put the Son of God to death and thereafter violently persecuted Jesus' followers. Jesus' sermon on the mount says we cannot serve two masters, especially when both masters are foes to each other. Jehovah's witnesses have "taken solemn vows to dedicate their lives

to the service of God" and they are controlled by a "belief . . . in a relation to a Supreme Being involving duties superior to those arising from any human relation", including any earthly relation to Caesar. So when there arises any conflict between God and Caesar, they yield to these superior duties, just as Peter the apostle said to the Law court: "We must obey God as ruler than men . . . and we are witnesses."—Acts 5:29-32, NW.

Furthermore, when Jesus told his Jewish questioners, "Pay back Caesar's things to Caesar," the matter under discussion was not Caesar's military draft or voluntary enlistment in his army. Hence Jesus' answer did not apply to that. What they asked him was this, "Is it lawful to pay tribute to Caesar or not?" and that was why Jesus asked them to show him a "tribute coin" and they showed him a denarius with Caesar's image and inscription on it. So Jesus declared it was lawful according to God's law through Moses to pay tax to Caesar even though Caesar had extended his empire by force of carnal weapons and had taken away the independence and liberty of Jehovah's chosen people. Even a man who conscientiously objected to serving in Caesar's armies of aggression and of subjugation should pay him taxes as a conqueror. Even if Caesar applied a large part of it to his military program, yet what he did with the money he collected by tax was not the responsibility of the conscientious objector. By Caesar's taking over the control of the country and the running of the government all the subjugated people were receiv-

ing some material benefits, and for this they were to pay back to Caesar the tax as due him. Consequently the conscientious objector who is in a covenant with God to be His witness, as the Jews were, is not authorized to engage in any subversiveness or to promote a pacifism that would lead to civil disobedience *à la* Mahatma Gandhi.

Because they are wholly dedicated to God by their vows to him through Christ, Jehovah's witnesses are according to God's Word no part of this world which is governed by the political systems. For this important Bible reason they tell officials of the government that they conscientiously object to serving in any military establishment or any civilian arrangement that substitutes for military service. Jesus told Caesar's representative Pilate: "My kingdom is no part of this world. If my kingdom were part of this world, my attendants would have fought that I should not be delivered up to the Jews. But, as it is, my kingdom is not from this source." Then Jesus told Pilate why he had not engaged in any military effort to liberate the Jews from Caesar's domination, saying: "For this purpose I have been born and for this purpose I have come into the world, that I should bear witness to the truth." He came to be Jehovah's witness and to take followers out from this world, and make them Jehovah's witnesses like himself. So he told his apostles: "Because you are no part of the world, but I have chosen you out of the world, on this account the world hates you." And when he prayed to God for them he said: "They are no

part of the world just as I am no part of the world." (John 18:36, 37; 15:19; 17:14, 16, NW) Concerning Jehovah's witnesses whom the world hated and mistreated Hebrews 11:38 (NW) says: "The world was not worthy of them." So because they are no part of this world they are forbidden to meddle and take part in its affairs and controversies. Spiritual Israelites are just as much separated from the nations and their armies as the natural Israelites were.

If their form of worship is to be "clean and undefiled from the standpoint of our God and Father", then they must each one endeavor to "keep oneself without spot from the world". (Jas. 1: 27, NW) They tell the officials that they are absolutely neutral toward the political disputes and the international controversies and combats of this world. They take no active or violent part for either side, but pay their vows to God and always advocate his kingdom and way of salvation.

Like the priests and Levites of Israel who were specially dedicated to Jehovah's service at his temple, they have no inheritance in this world. So they do not fight for territories; and if they suffer loss of property through persecutions by their home government or through invasion of the land by armed aggressors, they trust in God to provide them with life's necessities. As Paul in prison wrote to his fellow witnesses: "You both expressed sympathy for those in prison and joyfully took the plundering of your belongings, knowing you yourselves have a better and an abiding possession."

(Heb. 10:34, NW) Rather than be killed in the violent endeavor to protect material properties of this world, they preferred to live in a despoiled condition that they might keep on witnessing for God's kingdom and "preach the word" and "be at it urgently in favorable season, in troublesome season". No matter what political or governmental changes may take place over their heads, they in their neutral position are obliged to submit to them and to carry on with God's work the best they can under the altered conditions. They know that God's kingdom, which the sermon on the mount teaches them to pray for and which they preach, will take full charge of all the earth after Armageddon.—2 Tim. 4:2, NW.

#### GOSPEL MINISTERS AND AMBASSADORS EXEMPT

The consecrated priests and Levites were exempted from conscription for military service in Israel. (Num. 1:45-54; 2:32, 33) Since Jehovah's witnesses are consecrated to God as followers of Jesus Christ, they should likewise be exempted from military duties with carnal weapons. God now exempts them not requiring them to fight as did Joshua, Gideon, Samson, Jephthah, Barak and David of ancient times. Jehovah God has made these Christian witnesses his ministers of the Kingdom gospel. In the United States of America the Selective Service Act of 1948 exempts ordained and regular ministers of the gospel from military obligations. But the officers charged with applying that Act allow the exemption only to those who are

full-time ministers, and not to all the rest. But each one of Jehovah's witnesses has as his vocation the ministry and is a minister of the gospel, whether able to render full time or only part time. Not merely the full-time servants among them, but each and every one of Jehovah's witnesses is under a vow of dedication, which involves "duties superior to those arising from any human relation". God's Word therefore appoints each and every one of them a minister of God and preacher of the Kingdom gospel; and officers of the law of the land, while having a legal right to do so, have no Scriptural right to discriminate and limit military exemption only to some, while excluding others. In doing so they must take responsibility before God for 'framing mischief by law'.

Being such ministers and preachers, they have not abandoned their neutrality as conscientious objectors and turned aside to engage in military support of this or that side of any worldly conflict. Jesus predicted their neutrality and their preaching activities at this militant time. When he prophesied, "Nation will rise against nation and kingdom against kingdom," he did not say his true followers would engage in such armed rising. Instead, he foretold they would be roughly treated and be "hated by all the nations", not just enemy nations bat all. Then giving Jehovah's witnesses a commission for this day as well as foretelling what type of work they would do, he said: "This good news of the kingdom will be preached in all the inhabited earth for the purpose of a witness to all

the nations, and then the accomplished end will come." (Matt. 24: 14, NW) So now each and every witness who is under vow to Jehovah God through Christ must obey that prophetic command and fulfill his commission as an ordained minister of the good news of the Kingdom. There is no exemption to any consecrated minister. Those taking the lead among them must set the example, and the others must imitate them. (1 Pet. 5: 1-3) These leading ministers do not engage in carnal warfare, but preach. The rank and file of Jehovah's witnesses, being also ministers of God, copy their faithful example and peacefully preach.

To these Christian witnesses the apostle Paul wrote: "He committed the message of the reconciliation to us. We are therefore ambassadors substituting for Christ, as though God were making entreaty through us. As substitutes for Christ we beg: 'Become reconciled to God.'" (2 Cor. 5: 19, 20, NW) As "ambassadors substituting for Christ" Jehovah's witnesses have conscientious objection to serving in the military and related establishments of the nations.

Ambassadors are exempt from military service in the nation to which their government sends them, especially in a hostile nation. Remember, in Bible times ambassadors were sent, not to friendly nations, but to nations at war or threatening war. God's ambassadors substituting for Christ are not sent to friendly nations, but to hostile nations. All nations of this world of Satan are hostile to God. The message given these ambassadors to deliver is,

"Become reconciled to God." This shows that the nations are not friendly. How, then, could these ambassadors Scripturally serve in the military forces of such nations or Scripturally consent to do so when required by national law? To desert the ranks of His ministers and thus quit preaching would mean to fight against God, who sent his ambassadors that they might call on the nations to become reconciled to God, not fight him. Jehovah's witnesses are God's ambassadors sent to ALL the nations, with the same message for all. Consequently they have not enlisted in the fighting forces of any of the nations. They maintain strict neutrality toward such nations in their mortal combats. They keep true to the divine government, which sends them as ambassadors, even though this neutrality and this Kingdom-preaching cause them to be "hated by all the nations". They have not fought for the unreconciled systems which God will destroy at Armageddon. Hence their conscientious objection!

Concerning these ambassadors the apostle says in this same letter: "Though we walk in the flesh, we do not wage warfare according to what we are in the flesh. For the weapons of our warfare are not fleshly, but powerful by God for overturning strongly entrenched things. For we are overturning reasonings and every lofty thing raised up against the knowledge of God, and we are bringing every thought into captivity to make it obedient to the Christ." (2 Cor. 10:3-5, NW) For this spiritual warfare you are ordered: "Take up the com-

plete suit of armor from God"; and such spiritual armor you must take up "that you may be able to stand firm against the machinations of the Devil; because we have a fight, not against blood and flesh, but against the [spiritual] governments, against the authorities, against the world-rulers of this darkness, against the wicked spirit forces in the heavenly places." Satan the Devil is the "ruler of this world" and the "god of this system of things". (Eph. 6:11-13 and John 12:31 and 2 Cor. 4:4, NW) The very application of such military terms in a spiritual way to God's ambassadors shows they are not pacifists.

Their warfare is not against blood and flesh. Their real foes cannot be touched by carnal weapons, and hence they take up God's spiritual armor. They turn their fighting qualities and energies into the spiritual warfare in order to liberate people from the bondage of the wicked spirit forces dominating this world. They are in God's spiritual army under Jesus Christ. For them to desert it and join this world in its fights would be disloyal to God and Christ. It would deserve to be punished with destruction without hope of any life in the righteous new world. They must keep their agreement with God and pay their vow to him, for those who are "false to agreements" are by God's law "deserving of death". (Rom. 1:31, 32, NW) So Jehovah's witnesses keep neutral toward worldly conflicts and obey these strict orders from on high: "As a right kind of soldier of Christ Jesus take your part in suffering evil. No man serving as a soldier involves

himself in the commercial businesses of life, in order that he may meet the approval of the one who enrolled him as a soldier.” (2 Tim. 2:3, 4, NW) By this neutral stand toward worldly conflicts and by loyal endurance in the spiritual warfare these soldiers enrolled by Christ meet his approval.

### AN EARTH-WIDE BROTHERHOOD

Since God’s ambassadors are sent to all nations with the one message of reconciliation, then all those who become reconciled to him become one earth-wide association of brothers. In just that way Jehovah’s witnesses are an international congregation of Christian brothers. God’s Word forbids them to split up over selfish interests and start fighting one another; it commands them to keep united and preserve peace among themselves. To emphasize this, the question was asked: “Does Christ exist divided? . . . For whereas there are jealousy and strife among you, are you not fleshly and are you not walking as men do? (1 Cor. 1:13; 3:3, NW) On this account they have not abandoned their neutrality toward this world and joined the armies of this divided world under their enemy Satan the Devil. To do so would have meant to become pitted against their spiritual brothers, the children of God, just as in war Protestant becomes pitted against Protestant, Catholic against Catholic, Jew against Jew. This would have resulted in fratricidal warfare for which they would be held strictly accountable by their heavenly Father. Contrary to taking or seeking to take the life of their

brothers, the sons of God, they are exhorted to lay down their lives for their brothers, in imitation of Jesus Christ and not of Cain who slaughtered his brother Abel. Hence the apostle John writes:

“Do not marvel, brothers, that the world hates you. We know we have passed over from death to life, because we love the brothers. He who does not love remains in death. Everyone who hates his brother is a manslayer, and you know that no manslayer has everlasting life remaining in him. By this we have come to know love, because that one surrendered his soul [or, life] for us; and we are under obligation to surrender our souls [or, lives] for our brothers.”—1 John 3:11-16, NW, margin.

The spirit of Jehovah God is upon his witnesses for them to “preach good tidings unto the meek” and to “bind up the brokenhearted”, rather than to break hearts by carnal combat. Now when the river of life-saving truth is flowing forth from the throne of God’s established kingdom, his witnesses must be like trees whose leaves are “for the healing of the nations” and “for medicine”, rather than wounding the nations. (Isa. 61:1; Luke 4:18; Rev. 22:2; Ezek. 47:12) This is the “surpassing way” of love, the love of God with all that a person has and the love of one’s neighbor as oneself.—1 Cor. 12:31-13:7, NW.

All the foregoing is only a partial statement of the case of Jehovah’s witnesses, which they have made to boards, officials and courts having the responsibility under the law of the land to determine whether they shall be granted the rights given to

conscientious objectors and ministers. But enough has been said to prove to such boards and officials and all others that Jehovah's witnesses are consistent in their claim. They are not pacifists, but are ministers and conscientious objectors on Scriptural grounds. In taking this stand the boards have been enabled to see that Jehovah's witnesses stay neutral toward this world and that they remain God's ministers and ordained preachers of the good news of his kingdom under Christ, with Scriptural and conscientious objection to their participation in worldly war in any form.

